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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1900.

No. 201.

THOMAS F. FARRELL ET AL., *Plaintiffs in Error,* vs. THE WEST CHICAGO PARK COMMISSIONERS, *Defendant in Error.*	In Error to the Supreme Court of the State of Illinois (17,639.)

Brief and Argument of Counsel for Defendant in Error.

STATEMENT.

FORM OF ACTION.

The West Chicago Park Commissioners, a municipal corporation, levied a special assessment on property benefited, for the cost of improving the boulevard connecting Garfield and Douglas Parks. The County Court of Cook County, Illinois, confirmed said assessment, the Supreme Court of Illinois affirmed that decision, and the present plaintiffs in error bring the case to this court upon a writ of error to said Supreme Court.

NATURE OF PLEADINGS.

The defendant in error, petitioner below, filed its petition in the County Court of Cook County, Illinois, August 28, 1896 (Record, page 3), alleging that

it was the corporate authority for park purposes of the Town of West Chicago; that as such authority it had located a boulevard, prepared plans, specifications, and an estimate of the cost of improving said boulevard, to be paid for by special assessment, all in accordance with a petition addressed to said park commissioners, in writing, by the owners of a majority of the land fronting on said proposed improvement. (Record, page 4.)

The petition further recites that the plans, specifications and estimate for improving said boulevard were, by ordinance duly passed, approved and adopted by the town of West Chicago, under the statute then in force; that said town authorities instituted proceedings in said County Court against the property to be benefited by the proposed improvement, for the levy and collection of such assessment; that commissioners were thereupon appointed by the court to prepare and file in said court their assessment roll, assessing said cost upon the property deemed to be benefited; and that the same was on the eighth day of July, 1893, after full hearing, confirmed by said court.

The petition further alleges that the Supreme Court of Illinois, afterwards, on writ of error, decided that the said assessment was improperly levied, because it was divided into several installments, whereas the park and town officers had, under the provisions of the statute then in force, no authority to make an assessment which should be payable in installments, their authority being limited to assessments payable in one sum; and that by reason of said decision the assessment proceeding had failed, and the petitioner was obliged to abandon the collection of said assessment so levied.

The petition then alleges that the mode of procedure

prescribed for the levying of such assessments had been changed in 1895 by an amendment to the statute, whereby the intervention of the "West Town Authorities" had been entirely dispensed with and eliminated, and the West Chicago Park Commissioners had been substituted in their place as the proper municipal officers to file in the County Court the petition for such assessment; that said park commissioners had made an estimate of the cost of said improvement, as required by law, and had, by ordinance duly passed, ordered "That a new special assessment on the property benefited by said improvement for the amount for which the same may be legally assessed, be levied to pay the cost of said boulevard improvement above specified, and the remainder of such cost be paid by general taxation, * * * all in accordance with an act of the General Assembly of the State of Illinois, approved June 24th, and in force July 1, 1895."

Wherefore said petitioner prayed "That the cost of said improvement may be assessed in the manner provided by law, and in accordance with said Act." (Rec., 9.)

Such assessment roll was prepared and filed.

Plaintiffs in error thereupon filed twenty-four objections, questioning the form of the proceedings and denying that their property was benefited to the amount of the assessment. (Rec., [illegible].) 24)

In not one of these twenty-four objections is any federal question mentioned or suggested. The point is made in the 9th objection that "said petition was not in accordance with the constitution of the State of Illinois," but nothing is said about the Constitution of the United States.

Afterwards plaintiffs in error were permitted to file additional objections, and some twenty-eight more were filed on the 18th of May, 1898. (Rec., 77.)

The eleventh of these additional objections complains that "the proceedings are contrary to the Constitution of the State of Illinois"; that they "put clouds on the titles to the property of these objectors without due process of law; and because said petition and proceedings are in other respects contrary to the Constitution of the State of Illinois."

The 12th objection is as follows, in full: "The statute under which the present proceedings are being conducted is contrary to the Constitution of the United States and in conflict with Section 10 (first) of Article I thereof." (Rec., 77.)

This 12th additional objection, filed by leave of court, on the day of the hearing, was the only objection ever filed by these plaintiffs in error relating in any way to the United States Constitution or any amendment thereof. No other federal question than the one here mentioned was raised at any time in the trial court.

On May 18th, 1898, the County Court overruled the "legal objections" as they are called in Illinois, meaning thereby those tried by the court (Rec., 81), and a jury was called and impaneled to try the issues as to benefits. (Rec., 82.) The trial commenced on the 24th day of May and continued during the 25th. On the 25th the jury returned their verdict finding "the issues for the petitioners, and that the property of said objectors is not assessed more or less than it will be benefited by the proposed improvement, not more nor less than its proportionate share of the cost thereof. (Rec., 83.)

The objectors here represented filed their motion for new trial (Rec., 83), which was on the following day overruled (Rec., 85), and judgment was entered confirming said assessment.

The motion for new trial contained twenty-six alleged reasons why a new trial should be granted, but not one of them alluded to the constitution or laws of the United States or any amendment thereto. (Rec., 184.)

Upon confirmation of the assessment the objectors appealed to the Supreme Court of Illinois, where they filed nineteen assignments of error, and afterwards two additional assignments, in not one of which is made the slightest reference to the United States Constitution, or any amendment thereto, or mention made of any federal question. (Rec., 216-218.)

The Supreme Court of Illinois affirmed this judgment of the County Court of May 26, 1898, its opinion appearing in the record at page 231-236, and being reported in *Farrell at al.* v. *West Chicago Park Commissioners*, 182 Ill., 250. In that opinion no reference is made to any question arising under the Constitution of the United States or any amendment thereto, nor to any laws of or authority exercised under the United States. The decision is based entirely on other grounds.

In this court, however, the plaintiffs in error have revived their claim that the statute of 1895 was unconstitutional, and allege in their 10th assignment of error that "said County Court erred in not granting the motion of the plaintiffs in error to dismiss said proceeding on the ground that said proceedings and the statute under which the same were conducted were contrary to the Constitution of the United States as set forth in objections

interposed in said County Court on behalf of said plaintiffs in error; the Supreme Court erred in sustaining the County Court." (Rec., 259.) That is the only assignment of error that purports to raise any "federal question."

LEADING FACTS IN THE CASE.

The defendant, "The West Chicago Park Commissioners," is a municipal corporation organized for the improvement and management of public parks and boulevards in the town of West Chicago, being part of the City of Chicago. By an act of the General Assembly of the State of Illinois, approved May 22, 1873, and in force July 1, 1873, appearing at 3 Starr & Curtiss Revised Statutes, Edition of 1896, pages 2862 to 2870, entitled "An Act in regard to the completion, improvement and management of public parks and boulevards, and to provide a more efficient remedy for the collection of delinquent assessments," provision was made for the completion and improvement of public parks and boulevards to be paid for by a special assessment upon the property to be benefited hereby. In accordance with the provisions of this act, the owners of a majority of the land fronting on Douglas boulevard, from Albany street westward and then northward to Garfield Park, in the city of Chicago, petitioned the West Chicago Park Commissioners to improve said boulevard, said improvement to be paid for by special assessment to be levied as provided in said act.

The park commissioners approved said petition, designated the line of said improvement, prepared plans, plats, specifications and estimates of the cost of such contem-

plated improvement and transmitted the same as required by section 3 of said act to the corporate authorities of said town of West Chicago. By section 3 of the act the supervisor, clerk and assessor were at that time the "town authorities" of said town. Upon the transmission and presentation of said plans, specifications and estimates the said corporate authorities on March 28, 1893, determined by ordinance duly adopted and passed by them that said improvement should be made and the expense thereof should be raised wholly by special assessment upon the property, lots and lands to be benefited thereby, and on April 7, 1893, a petition was filed in the County Court of Cook, Illinois, for the purpose of properly levying such assessment.

By the said act of 1873, it was provided that "The proceedings to levy and collect such assessment subsequent to the filing of said petition, should, in all things as near as may be, conform to the provisions of 'an act to provide for the incorporation of cities and villages,'" being the act under which ordinary special assessments for the improvements of streets were then and still are levied and collected.

When this petition was filed, the County Court appointed commissioners to assess the benefits and return their assessment roll into court, which was accordingly done, and on the 12th day of May, and 8th day of July, 1893, orders were entered in said cause confirming said assessment roll.

At the time said assessment was levied the "Cities and Village Act" above referred to, provided that special assessments might be collected by installments, the right to make such division into installments having been con-

ferred upon the city and village authorities by an amendment approved April 29, 1887, some fourteen years after the park board was authorized to adopt the provisions of said "City and Village Act" in the levying and collection of its assessments. When the first and second installments of this special assessment became due certain property owners refused to pay the assessment, their lands became delinquent, and application was made by the county collector for judgment and order of sale for the delinquent assessments, and such sale was ordered. From this judgment of sale Helen Culver, and afterwards other objectors, took an appeal to the Supreme Court of Illinois, and assigned as error the division of said assessment into installments, contending that the "City and Village Act" *as adopted* for the west park assessments did not provide for the division into installments, but that said provision was added afterwards by amendment of 1887, which did not apply to the west park assessments. This case is reported in 161 Illinois, page 89, and the Illinois Supreme Court held that "the adoption by reference in the statute of 1873, of parts of the Cities and Village Act did *not* include the subsequent amendment to such Cities and Village Act, and that therefore the park authorities were without authority to divide their assessment into installments, and the assessment as levied was, therefore, void. Upon the announcement of this decision several writs of error were filed by numerous objectors, including the present plaintiffs in error. *Farrell et al.* v. *Town of West Chicago*, 162 Ill., page 280, *Connor et al.* v. *Town of West Chicago*, 162 Illinois, page 287, all resulting in reversing the order of confirmation of the assessment.

The work on the improvement had been commenced as soon as the original order of confirmation was entered, and the improvement had been completed before the error in dividing the assessment into installments was discovered. Meanwhile by a new statute of Illinois, passed in 1895, found in Starr & Curtis' Revised Statutes, page 2907, "the power to levy, assess and collect special assessments or special taxes on contiguous property, or general taxes, or both," for the purpose of improving boulevards, highways, or streets under their control, which had previously been vested in the supervisor, assessor and clerk of the town of West Chicago, was transferred to the park commissioners, and the same statute of 1895, expressly adopted article IX of the Cities and Village Act and all acts amendatory thereto, for the government of the park commissiones in respect to such special assessments. This is the statute of 1895 so frequently referred to in the objections and assignments of error in this record. By its terms (Section 20, Starr & Curtis, page 2910) it conferred authority upon the park commissioners to levy, assess and collect a special assessment, where such improvement has been authorized and partly or wholly completed and the assessment therefor had been set aside by the courts. Under this authority the West Chicago Park Commissioners on August 4, 1896, passed an ordinance providing for a special assessment to pay the cost of said improvement, and a petition was filed in the County Court of Cook County August 28, 1896, for that purpose. This is the original petition in the case now before the court. On the 29th day of August, 1896, the assessment roll was filed in said case assessing the cost upon the neighboring lands according to the benefits resulting thereto from the improvement.

Numerous objections were filed against the assessment then levied, and on the 27th day of April, 1897, upon hearing of the legal objections the same were sustained, and the petition was dismissed. From this order the West Park Commissioners appealed to the Supreme Court of Illinois, *West Chicago Park Commissioners* v. *Farber et al.*, 171 Illinois, 146. The decision of the County Court was reversed and the case was remanded for further proceedings, December 22, 1897.

Being redocketed in the County Court further objections were filed by the plaintiffs in error herein, the issues were tried by a jury, and the assessment roll was confirmed. Several objectors prayed an appeal to the Illinois Supreme Court. The decisions on these appeals are found in *Cummings* v. *West. Chi. Pk. Comrs.*, 181 Illinois Reports, 136, *Culver* v. *West Chi. Pk. Comrs.*, 182 Illinois Reports, 134, and *Farrell* v. *West Chi. Park Comrs.*, 182 Illinois Reports, 250, where the judgment of confirmation was approved by the Illinois Supreme Court October 13, 1899. From this judgment affirming the judgment of the County Court this case is now brought to the United States Supreme Court by writ of error, to review the "federal questions" raised in the court below.

ASSIGNMENTS OF ERROR RAISING FEDERAL QUESTION.

The only objections or assignments of error relating in any way to the United States Constitution or laws of the United States are the following:

In the County Court—

Objection 12. "The statute under which the present proceedings are being conducted is contrary to the Con-

stitution of the United States and in conflict with Section 10 (Paragraph First) of Article I. thereof." (Rec., 77.)

In the Illinois Supreme Court—

No assignment of error in this court raises federal question.

In the United States Supreme Court—

Assignment 10. "The said County Court erred in not granting the motion of the plaintiffs in error to dismiss said proceedings on the ground that said proceedings and the statute under which the same were conducted were contrary to the Constitution of the United States, as set forth in objections interposed in said County Court on behalf of said plaintiffs in error; and the Supreme Court (of Illinois) erred in sustaining said County Court." (Rec., 259.)

There are no objections, motions for new trial, or assignments of error in this case, referring to the 14th amendment, such as were filed in the case of *Lombard et al.* v. *West Chicago Park Commissioners*, lately heard in this court as No. 160.

IMPORTANCE OF THE CONTROVERSY.

It may be presumed that the Supreme Court of Illinois, in deciding this case, gave to each of the grave and far-reaching questions involved therein, searching and complete consideration. An expenditure of over a quarter of a million dollars had been made by a municipality created by an act of the legislature, under authority of the Illinois Constitution, investing such municipality with the power and duty of making the improvement, investing it

with the power and duty of providing by ordinance for the expense of the improvement, and investing it with the power and duty of visiting the burden of the cost of such improvement, equitably upon the lands specially benefited thereby.

This taxing power was to be exercised upon the most nearly just and equitable grounds that the wisdom of the legislature had been able to devise. The proceedings for the assessment must be had before a judge elected by the people whose interests were involved; and those interests were to be protected by a jury selected from among those people; and at the hearing it is a noticeable fact that not one witness nor one objector whose name appears in this record had the hardihood to say or claim that the benefits assessed had not been received by them, and the plaintiffs in error now formally concede that fact. Some of the witnesses for the objectors testified that each lot was benefited two or three times the amount of the assessment, and if their testimony is scrutinized it will be seen that even those valuations were underestimates of the actual benefits received.

Nor has counsel, anywhere, in any court, had the temerity to argue the failure of benefits equal, or more than equal to the proposed assessment. These large expenditures were made upon the legitimate anticipation that the persons receiving, in benefits, three or four times their cost, should be required to pay for the improvement. The proposition that, all this being true, the public treasury, drained from hundreds of thousands of citizens deriving but a minimum of benefit, if any, should foot the bill, was one which, of itself, would have appealed to the Illinois Supreme Court with enough of gravity to induce a most serious consideration of every question raised against the validity of the proceedings.

POINTS.

I.

(1) "IT IS ESSENTIAL TO THE JURISDICTION OF THIS COURT OVER THE JUDGMENT OF A STATE COURT THAT IT SHALL APPEAR THAT ONE OF THE QUESTIONS MENTIONED IN THE ACT (SECTION 709 OF THE REVISED STATUTES OF THE UNITED STATES) MUST HAVE BEEN RAISED AND PRESENTED TO THE STATE COURT."

(2) "SUCH QUESTION MUST HAVE BEEN DECIDED BY THE STATE COURT OR ITS DECISION MUST HAVE BEEN NECESSARY TO THE JUDGMENT OR DECREE IN THE CASE."

(3) "IF SUCH QUESTION WAS RIGHTLY DECIDED THE JUDGMENT MUST BE AFFIRMED."

Murdock v. *Mayor, etc., of Memphis*, 87 U. S., 590.

THE UNITED STATES COURT WILL CONSIDER ONLY THE FEDERAL QUESTION; THE DECISION OF THE STATE COURT ON ALL OTHER QUESTIONS, AND ON ALL QUESTIONS OF FACT, IS FINAL AND WILL NOT BE DISTURBED.

Murdock v. *Mayor, etc., of Memphis*, 87 U. S., 590.

ALTHOUGH ONE FEDERAL QUESTION IS PROPERLY RAISED THE UNITED STATES SUPREME COURT WILL NOT CONSIDER ANOTHER FEDERAL QUESTION WHICH WAS NOT PROPERLY RAISED IN THE COURT BELOW.

Dewey v. *Des Moines*, 173 U. S., 193.

Keokuk & H. Co. v. *Illinois*, 175 U. S., 626 (1900).

NOR IS IT SUFFICIENT THAT THE FEDERAL QUESTION BE RAISED BELOW, MERELY; IT IS ALSO NECESSARY THAT "THE PLAINTIFF IN ERROR SHALL FILE AN ASSIGNMENT OF ERRORS WHICH SHALL SET OUT SEPARATELY AND PARTICULARLY EACH ERROR ASSERTED AND INTENDED TO BE URGED. * * * ERRORS NOT ASSIGNED ACCORDING TO THIS RULE WILL BE DISREGARDED."

Rule 35 of this court.

Stevens v. *Gladding et al.*, 19 How., 64.

Grape Creek Coal Co. v. *Farmers' L. & T. Co.*, 24 U. S. App., 38.

2 Encyc. Pl. & Pr., 942-3.

THE SAME RULE, REQUIRING ASSIGNMENT OF ERRORS, PREVAILS IN ILLINOIS AND IS ENFORCED WITH GREAT STRICTNESS.

Rule 11, Ill. Sup. Ct., 168 Ills., 12.

Union Mut. L. Ins. Co. v. *Kirtchoff*, 149 Ill., 536.

IT IS NECESSARY THAT THE FEDERAL QUESTION SHOULD BE RAISED BY THE ASSIGNMENTS OF ERROR IN THE STATE SUPREME COURT AS WELL AS IN THE NISI PRIUS COURT.

Dewey v. *Des Moines*, 173 U. S., 193.

II.

THE PHRASE, "EX POST FACTO," AS USED IN THE CONSTITUTION OF THE UNITED STATES, APPLIES ONLY TO PENAL AND CRIMINAL PROCEEDINGS, AND NOT TO CIVIL PROCEEDINGS WHICH AFFECT PRIVATE RIGHTS RETROSPECTIVELY.

2 Bancroft History of the Constitution, 213; cited in *Kring* v. *Missouri*, 107 U. S., 221.

Calder v. *Bull*, 3 Dallas, 386 (A. D. 1798), leading case.

Baltimore & Susquehanna v. *Nesbit*, 10 How., 401 (1850).

Locke v. *New Orleans*, 71 U. S., 172; 4 Wall., 172 (1866).

Carpenter v. *Pennsylvania*, 58 U. S., 456; 17 How., 456 (1854).

Ex Parte A. H. Garland, 73 U. S., 333 (1866).

Drehman v. *Stifle*, 75 U. S., 595 (1869).

Randall v. *Krieger*, 90 U. S., 137 (1874).

Ex Parte Sawyer, 124 U. S., 200 (1887).

Ex Parte Medley, 134 U. S., 160 (1889).

Hawker v. *New York*, 170 U. S., 189 (1897).

Thompson v. *Missouri*, 171 U. S., 380 (1897).

Stephens v. *Cherokee Nation*, 174 U. S., 445 (1898); civil act of Congress not "ex post facto," though retroactive.

12 Am. & Eng. Cyc. of Law, 2d Ed., 526.

Cooley Constitutional Law, 285.

The same prohibition contained in the Constitutions of Illinois of 1818, 1848 and 1870 has received the same construction. The limitation pertains to criminal or penal statutes only.

Ill. Const., 1818, Art. viii, Sec. 16.

Ill. Const., 1848, Art. xiii, Sec. 17.

Ill. Const., 1870, Art. ii, Sec. 14.

Coles v. *County of Madison*, 1 Ill., 154.

III.

NO NEW RIGHT WAS CONFERRED BY THE PARK ACT OF JULY 1, 1895. THAT ACT PROVIDED A PROCEDURE ONLY.

West Park Commrs. v. *Farber*, 171 Ill., 146, at p. 156.

MOREOVER, WHERE A NEW STATUTE HAD BEEN ENACTED EXPRESSLY TO TAKE THE PLACE OF A FORMER UNCONSTITUTIONAL STATUTE, THIS COURT HAS HELD THE NEW ACT CONSTITUTIONAL, AND HAS ENFORCED THE ASSESSMENT THEREUNDER.

Spencer v. *Merchant*, 96 U. S., 97.
Bellingham v. *New Whatcomb*, 172 U. S., 314.

THE QUESTION WHETHER THE DECISION BELOW VIOLATED THE XIVTH AMENDMENT WILL NOT BE CONSIDERED UNDER A GENERAL OBJECTION THAT THE STATUTE OF 1895 VIOLATED ART. I, SEC. 10 OF THE CONSTITUTION OF THE UNITED STATES.

Dewey v. *Des Moines*, 175 U. S., 193.
Clarke v. *McDade*, 165 U. S., 168.
Keokuk Bridge Co. v. *Illinois*, 175 U. S., 626.
Chapin v. *Fye*, 179 U. S., 127.

IV.

THE ORDINANCE OF MARCH 28TH, 1893, WAS AND IS VALID SO FAR AS TO AUTHORIZE AN ASSESSMENT; HAS BEEN SO HELD BY THE ILLINOIS SUPREME COURT; AND THE OBJECTION THERETO, BECAUSE DECLARED VOID IN OTHER PARTS, IS NOT WELL TAKEN IN LAW, AND RAISES NO FEDERAL QUESTION.

If a statute or ordinance is void in part only, the rest of

it, if separable, will be enforced, without reference to the void part.

White v. *City of Alton*, 149 Ill., 626.
Illinois Constitution, 1870, Art. 4, Sec. 13.
23 Am. & Eng. Cyc. Law, 225.
Keokuk, etc., Line v. *Keokuk*, 95 U. S., 80.
Cummings v. *West Chicago Park Commissioners*, 181 Ill., 136.

V.

"THE UNITED STATES SUPREME COURT WILL NOT UNDERTAKE TO CORRECT ERRORS OF STATE COURTS IN RESPECT TO DETAILS OF ASSESSMENTS. ITS JURISDICTION IS AT AN END IF IT FINDS THAT SUFFICIENT PROVISION HAS BEEN MADE BY THE STATE LAW FOR CONTESTING THE CHARGE WHEN IMPOSED."

Davidson v. *New Orleans*, 96 U. S., 97.

Followed by:

Kirtland v. *Hotchkiss*, 100 U. S., 491.
Kelly v. *Pittsburg*, 104 U. S., 78.
Hagar v. *Reclamation District*, 111 U. S., 701.
Head v. *Amoskeag Mfg. Co.*, 113 U. S., 9.
Wurtz v. *Hoagland*, 114 U. S., 606.
C. N. O. & T. P. R. R. v. *Kentucky*, 115 U. S., 321.
Spencer v. *Merchant*, 125 U. S., 345.
Bell's Gap R. R. v. *Pensylvania*, 134 U. S., 233.
Lent v. *Tillson*, 140 U. S., 316.
Marchant v. *Penn. R. R. Co.*, 153 U. S., 380.
Watson v. *Nevin*, 128 U. S., 578.

Roach v. *Nevin*, 128 U. S., 578.

Huling v. *Kaw Valley R. R.*, 130 U. S., 559.

Winona & St. P. Land Co. v. *Minnesota*, 159 U. S., 526.

Eldridge v. *Trezevant*, 160 U. S., 452.

Fallbrook Irr. District v. *Bradley*, 164 U. S., 112.

C. B. & Q. R. R. v. *Chicago*, 166 U. S., 226.

Castillo v. *McConnico*, 168 U. S., 674.

Backus v. *Fort St. Union Depot Co.*, 169 U. S., 557.

Bellingham R. R. v. *New Whatcomb*, 172 U. S., 314.

Dewey v. *Des Moines*, 173 U. S., 193.

Weyerhauser v. *Minnesota*, 176 U. S., 550.

McGoun v. *Ill. Tr. & Sav. Bank*, 170 U. S., 283.

ARGUMENT.

I.

NO FEDERAL QUESTION INVOLVED.

This case is brought here on writ of error to the Illinois Supreme Court under section 709 of the United States Revised Statutes. We have cited authorities to the effect that these are the only provisions under which such writ of error lies, and that under this statute the United States Supreme Court will consider only the "federal questions" properly raised, and necessarily involved in the decision of the court below. That being the law all questions of state practice, all questions of construction of the state statutes, and all questions arising under the common law will be regarded as finally determined in the Illinois Courts, and only those questions arising under the constitution or laws of the United States and decided adversely to the party claiming under them, will be argued here.

Furthermore, even if the decision on any such "federal question" is here assigned as error, it does not follow, necessarily, that such "federal question" is properly before this court, for in addition to assigning it as error in *this* court it must appear that the same (and not a different) "federal question" was properly raised in the *State* Courts, so as to be necessarily involved in the decision. *E converso*, it is not sufficient that the question should have been raised below, for it must also be as-

signed as error in this court. In other words the federal question must be (1) raised below *and* (2) assigned as error here, or it will not be considered. Neither one alone will suffice.

In the case of *Murdock* v. *Memphis* (87 U. S., 590), there is an elaborate discussion by the court, and by several distinguished *amici curiae*, concerning the proper limits to be observed by the United States Supreme Court in reviewing the judgment of the highest court of a state. It was observed that the jurisdiction to review the state court was conferred by an amendment of 1867 to the judiciary act of 1789. The act of 1789 and the amendment of 1867 are there printed in parallel columns for ready comparison. The act of 1867 now appears as Section 709 of the Revised Statutes.

By the judiciary act of 1789 it was *expressly* provided that "no other error shall be assigned or regarded as a ground for reversal in any such case aforesaid than such as appears on the face of the record and immediately respects the before mentioned questions of validity or construction of said constitution treaties, statutes, commissions or authorities in dispute."

This *express* limitation upon the power of this court to review the decision of a state court is not found in the amendment of 1867, and it was therefore argued with extraordinary ability that the limitation no longer existed; but after very careful consideration the court decided in a most learned, elaborate and exhaustive opinion in *Murdock* v. *Memphis, supra*, that it was still limited, in reviewing the state court, to the so-called "federal questions," and that in all other respects the decision and judgment of the State Court was still final.

In this record it appears that only one objection to the confirmation of assessment filed below raised a federal question.

And one only of the assignments of error in this court is based on this constitutional objection, but it will be observed that the point was not mentioned in the assignments of error in the Illinois Supreme Court, nor in the opinion of that court affirming the judgment.

Under the decisions of this court it is not sufficient that the constitutionality of the statute should have been questioned in the trial court; it must also be preserved by proper assignment of error in the highest court of the state, and must have been decided by that court adversely to the plaintiff in error before the United States Supreme Court will undertake to review it.

Even though the federal question had been raised in the Illinois Supreme Court, yet if the decision was fairly based on other sufficient grounds, the United States Supreme Court will not review the federal question; *a fortiori* it will not interfere with the decision of the state court if the federal question was not raised in that court. Section 709 of the Revised Statutes gives this court jurisdiction over decisions of the State Supreme Court only when the decision of the State Court is against the right claimed under the United States Constitution or laws. It cannot be said that the Illinois Supreme Court decided adversely to a claim which was not made before it.

Moran v. *Horsky*, 178 U. S., 205 (1899).

II.

WAS THE PARK ACT OF 1895 AN EX POST FACTO LAW?

The only provision of the Constitution of the United States mentioned in the objections filed in the County Court, or in the assignments of error in this court (none was mentioned in the Illinois Supreme Court) is Article I, Section 10, Paragraph First. This section provides that "no state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal, coin money, emit bills of credit, make anything but gold and silver coin a legal tender in payment of debts, pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility."

We think all these prohibitions may be dismissed without a word, except the "*ex post facto*" clause.

As to the clause, "No state shall * * * pass any * * * ex post facto law," it has been settled beyond the possibility of dispute, since the year 1798, when this court decided the case of *Calder* v. *Bull* (3 Dallas, 386), that this limitation upon the powers of the states concerned penal or criminal statutes only; that the several states were not, by this provision of the federal constitution, prohibited to pass retroactive laws concerning civil matters, but only laws that directly or indirectly imposed or increased a penalty for an act or crime done or committed prior to the passage of the law. Other retroactive laws may violate provisions of the state constitutions, or they may violate some other provisions of the federal constitution, but they do not come under this pro-

vision concerning *ex post facto* laws unless they concern crimes or penalties for crimes.

Calder v. *Bull*, 3 Dallas, 386 (1798).
12 Am. & Eng. Cyc. of Law, 2d Ed., 526.
Cooley Constitutional Law, 285.
Cases cited under Point II above.

III.

NO NEW RIGHT WAS CONFERRED BY THE PARK ACT OF JULY 1, 1895. THAT ACT PROVIDED A PROCEDURE ONLY.

Plaintiffs in error urge that "The act of 1895 is in conflict with the Constitution of the United States." (Rec., 259.)

We answer to this, first, no new right was conferred by the Park Act of 1895. That act provided a procedure only.

The *right* or *power* to collect an assessment, was in existence from the moment that ordinance was passed, but the method of enforcing that right was somewhat changed. Before the act, the West Town Authorities were designated as the only persons or corporation to file the petition; after that act the West Chicago Park Commissioners might take their places as petitioners. It is as if Mr. Davis, of Idaho, had been sentenced to be hanged by the sheriff of the county, and the legislature had then passed an act providing, that all executions of the death penalty should take place under the management of the worden of the penitentiary. This court has recently held that the sentence should be enforced, notwithstanding the change in the officer whose duty it was

to execute it. This case has not yet been reported. So here, it can make no possible difference to these objectors who filed the petition, so long as they had a fair hearing on the merits, and that they have had.

This point was carefully considered in *West Chicago Park Commrs.* v. *Farber,* 171 Ill., 146, at 156.

Our second answer is, that *without* the act of 1895, there was power to levy a new assessment in case the first assessment is set aside by any court. This is found in Article IX of the Cities and Villages' Act, adopted by the Park Act of 1873, for the collection of special assessments for Park Purposes. What the amendment of 1895, really did, was to permit (but not command), the substitution of the West Chicago Park Commissioners as petitioners, instead of the "West Town Authorities." This paragraph is quoted at length at the end of this brief (with the other statutes relating to this case). Inasmuch as the whole procedure of this "city and village act" for collection of assessments was expressly adopted by Park Act of 1873, for the collection of Park assessments, we insist that this provision applied to park boards.

Starr & Curtis' Rev. Statutes, Ed., 1896, p. 775.

Our third answer to this objection is, that our ordinance of 1893, was not *defective,* there was nothing *lacking,* or *wanting;* the objection to it was, that it was redundant; there was too much, and it was the redundancy that was invalid. Take away the invalid surplusage, and you have taken away no "vital" part of the ordinance. The remaining parts contain all the neces-

sary and usual provisions of a good ordinance for a special assessment.

If it had been originally passed in that form, or if the invalid part had been ignored by the County Court, there would have been no "defect" discoverable. But, instead of ignoring the invalid part, and clinging to the valid part, the County Court, as it were gave a judgment in ejectment on a bill for partition, and the Supreme Court held the judgment void.

IV.

THE OBJECTION THAT THE ORDINANCE OF 1893 WAS WHOLLY VOID, BECAUSE DECLARED VOID IN PART, IS NOT SUSTAINED BY THE GENERAL RULES FOR CONSTRUCTION OF STATUTES AND ORDINANCES, NOR BY THE DECISIONS OF THE ILLINOIS COURTS CONCERNING THIS PARTICULAR ORDINANCE, AND IT RAISES NO FEDERAL QUESTION.

Counsel complain that by the law of Illinois no assessment can be made without a prior valid ordinance; and that this ordinance was and had been declared void; that therefore, the assessment was void.

We answer,

First. The ordinance was not wholly void.

Second. The ordinance has not been *declared* wholly void.

Third. The ordinance *has* been declared valid in part.

Fourth. This court will not review that decision, but will merely consider whether, under that construction, due process of law is denied.

Fifth. The ordinance and law as applied, provided ample opportunity for a full hearing, which was had, and

not denied, and therefore, no federal question concerning due process of law is involved.

It has long been settled in Illinois, in accordance with the general principles applied elsewhere concerning construction of statutes and ordinances, that the invalidity of one part of an act or ordinance does not invalidate the rest of it, if the several portions may be separated.

Thus in *White* v. *Alton* (149 Ill., 626), there was an objection that by the ordinance for a local improvement it was provided, that one part of the cost should be levied upon a street railway by special taxation, and the balance should be assessed against the lands benefited as a special assessment. The tax was held void, but the balance was enforced. The court said:

> "It is claimed that the ordinance is void as to the levy against the horse railway company, and being void as respects that property, it is also void as respects the property of appellants. We do not concur in that view. A question of this character arose in *Wilbur* v. *City of Springfield* (123 Ill., 402), and it was there held to be a well settled principle, applicable to by-laws and ordinances, that if the provisions relating to one subject-matter be void, and as to another they be valid, and the two are not necessarily or inseparably connected, they may be enforced as to the valid portion as if the void portion had been omitted."

As regards statutes, the Illinois constitution expressly provides, that while the subject of an act must be expressed in its title, yet "if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed. (Ill. Const., 1870, Art. 4; Sec., 13.)

Indeed, it is a general rule that, "part of a statute may

be unconstitutional and void, and the residue constitutional and valid." (23 Eng. & Am. Cyc. Law, 225.) And by the same reasoning it will be seen, that part of an *ordinance* may be valid even though another, disconnected, part has been declared void.

The United States Supreme court has applied this doctrine directly to the construction of an ordinance in the case of *Keokuk Co.* v. *Keokuk* (95 U. S., 80.) An ordinance of Keokuk imposing wharfage fees was in question. The court, speaking of that *ordinance*, says:

> "Statutes that are unconstitutional in part only, will be upheld so far as they are not in conflict with the constitution, provided the allowed and prohibited parts are severable."

But not only *should* this particular ordinance be held valid in those parts that direct the levying of an assessment, but it *has been* so held by the Illinois Supreme Court.

In its opinion in *Farber* v. *West Chicago Park Commissioners*, 171 Ill., at 153, where this identical ordinance was under consideration, the court said:

> "When it becomes necessary to make a re-assessment, not because of any irregularity in the passage of the ordinance or because it fails to sufficiently describe the improvement, but solely because in a distinct section it attempted to levy the assessment in an illegal *mode*, we see no reason why the valid portions of the ordinance may not be treated as still in force, and made the basis of a proceeding for a new levy. We must hold, that only Section 2 of the original ordinance was invalid, that the ordinance furnished a proper basis for a new proceeding, and that work done and completed under such ordinance, was not done under an ordinance wholly void, so that

no power remained to pay for it by special assessment."

See also,

Davis v. *City of Litchfield*, 155 Ill., 384.

The language above quoted, was taken from a prior decision of the same court in *Freeport Street R. R.* v. *Freeport*, 151 Ill., 451. In that case there was under consideration, a re-assessment against the Street Railroad, of that part of an assessment which was declared void in *Kuehner* v. *Freeport*, 143 Ill., 92. That ordinance, declared void when the *mode of collection* was considered, was still valid as a basis for an assessment in the *proper mode*.

Applying the foregoing principles to the case at bar we find, that our ordinance of 1893 provided, in two separate sections, for two things: The first section provided, *that the improvement should be made and should be by special assessment*. The second section provided that the assessment should be devided into installments.

The Illinois courts have held, that the first section was valid, and authorized the doing of the work and the collection of *an* assessment therefor; they held the second section void, however, and therefore that particular assessment (the first one), levied in that illegal manner, was void; but they also held, that the new assessment made in the proper manner, was not void.

In other words, it was the court proceeding that was void, the mere *levying* of the assessment, and not the ordinance providing that it *should be* levied. It was the kind of judgment that was illegal, and not the ordinance providing that there should be a judgment. It is as if

the park commissioners had directed an assessment proceeding, and the court had rendered a judgment of condemnation, or as if a plaintiff had sought a money judgment on promissory notes, and the court had decreed him entitled to an annuity.

There were valid parts of the ordinance sufficient to warrant the special assessment even after the supposed condemnation decree had been declared void. As a condemnation ordinance it was void; as an installment ordinance it was void; but it was not void as an assessment ordinance, without installments. It was that *part* of the ordinance which provided for installments that was invalid, and not the *ordinance* as a whole.

Whether the Illinois Supreme Court gave the proper construction to that ordinance, or not, is not a federal question. The only federal question that will be here considered is this: Did the Act of 1895, as construed by the Illinois Supreme Court violate any provision of Article I, Section 10, Paragraph 1st, of the United States Constitution—is it an ex post facto law? If not, it violates none of the provisions of the federal constitution which the plaintiffs in error urged below in the County Court (they urged none in the Illinois Supreme Court), and the decision should be affirmed.

V.

"DUE PROCESS OF LAW" HAS COME TO MEAN, WHEN USED CONCERNING SPECIAL ASSESSMENTS, OPPORTUNITY TO CONTEST.

THE FEDERAL QUESTION INVOLVED IS WHETHER OR NOT THE LAW, AS ENACTED, PROVIDES OPPORTUNITY TO CONTEST THE ASSESSMENT BY ADVERSARY PROCEEDINGS.

WHETHER, IN THE PARTICULAR CASE, THE ASSESSMENT EXCEEDED THE BENEFITS, OR WHETHER THE ASSESSMENT WAS LEVIED BEFORE THE BENEFITS WERE RECEIVED, ARE NOT FEDERAL QUESTIONS. NOR IS ANY ATTEMPT MADE IN THIS CASE TO DENY THAT OBJECTOR'S LANDS WERE BENEFITED TO THE FULL EXTENT OF THE ASSESSMENT.

We believe that the foregoing suggestions under points 1 to 4 completely answer all that can fairly be urged in this court against the assessment proceeding now under consideration on the objections made below; but we are informed that the plaintiffs in error intend to argue all or some of the questions that were argued in the case of *Lombard et al. v. West Chicago Park Commissioners*, lately before this court as Case No. 17,575, Term No. 160. In that case several objections were made under the 14th amendment; here there were no such objections made or argued. But to show this court how ample has been the protection which the Illinois courts have given to the rights of plaintiffs in erorr and to guard against any surprise by assignment of additional errors, we here add a part of our brief in the Lombard case, concerning due process of law.

DUE PROCESS OF LAW.

It would seem that in the good year of our Lord, nineteen hundred and one it should not be necessary to resort to the highest judicial tribunal in the land to determine whether an assessment for certain improvements is by "due process of law." These words, or their equivalent, "Law of the land," appear in the Constitution of the State of Illinois adopted in 1870 (Art. II, Sec. 2), in the Illinois Constitution of 1848 (Art. XIII, Sec. 8), in the Constitution of Illinois of 1818 (Art. VIII, Sec. 8), in the ordinance of 1787 (Art. II), in the constitutions of most if not all of the United States from the time of the revolution to the present day, in the XIVth and Vth amendments to the federal constitution, and in Magna Carta itself, which provides that no freeman shall be imprisoned or disseised "nisi per legale judicium parium suorum vel *per legem terrae.*" And yet we do not know the meaning of "law of the land" or "due process of law."

In 1819 in the case of *Bank* v. *Oakley* (4 Wheat., 235) Justice JOHNSON said:

> "As to the words from Magna Carta incorporated in the Constitution of Maryland, after volumes spoken and written with a view to their exposition, the good sense of mankind has at length settled down to this: that they were intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice."

This was before the XIVth amendment was passed and before the flood of litigation from the state courts which followed that amendment inundated the United States Supreme Court.

In 1877, Mr. Justice MILLER, in *Davidson* v. *New Orleans* (96 U. S., 97) said:

> "Most of these provisions, including the one under consideration, either in terms or in substance, have been embodied in the constitutions of the several states, and in one shape or another have been the subject of judicial construction. It must be confessed, however, that the constitutional meaning or value of the phrase, 'due process of law,' remains to-day without that satisfactory precision of definition which judicial decisions have given to nearly all the other guaranties of personal rights found in the consitutions of the several states and of the United States."

Twenty years later, in 1898, Mr. Justice MCKENNA was pleased to say, in *Orient Insurance Co.* v. *Daggs* (172 U. S., 557):

> "What it is for a state to deprive a person of life, liberty, or property without due process of law is not much nearer to precise definition to-day than it was said to be by Mr. Justice Miller in *Davidson* v. *New Orleans*, 96 U. S., 97."

We will, therefore, not undertake to define "Due Process of Law," but will be content to cite a few cases where this court has held the procedure to be in violation of the constitutional prohibition, many cases where this court has held that the constitutional provision has *not* been violated, and then endeavor to show that the case at bar falls in the latter class.

In *Davidson* v. *New Orleans* (96 U. S., 97) Mr. Justice MILLER said:

> "Is it not a little remarkable that while this provision has been in the Constitution of the United States as a restraint upon the authority of the federal government, for nearly a century, and while, during

all that time the manner in which the powers of that government have been exercised has been watched with jealousy and subjected to the most rigid criticism in all its branches, this special limitation on its powers has rarely been invoked in the judicial forum or the more enlarged theatre of public discussion.

"But while it has been a part of the constitution as a restraint upon the powers of the states only a few years, the docket of this court has been crowded with cases in which we are asked to hold that state courts and state legislatures have deprived their own citizens of life, liberty or property without due process of law. It would seem, from the character of many of the cases before us, and the arguments made in them that the clause under consideration is looked upon as a means of bringing to the test of the decision of this court the abstract opinions of every unsuccessful litigant in a state court, of the justice of the decision against him, and of the merits of the legislation on which such decision may be founded."

"As contributing to some extent to * * * determining what classes of cases do not fall within its provisions, we lay down the following proposition, as applicable to the case before us":

"That whenever, by the laws of a state or by state authority a tax, assessment, servitude, or other burden is imposed upon property for the public use, whether it be of the whole state or of some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed in the ordinary courts of justice, with such notice to the person or such proceeding with regard to the property as is appropriate to the nature of the case, the judgment in such proceeding cannot be said to be without due process of law, however obnoxious it may be to other objections. It may violate some provision of the state constitution, against unequal taxation, but the Federal Constitution imposes no restraints on the state in that regard. If private property is taken for public uses

> without just compensation it must be remembered that, when the XIVth amendment was adopted, the provision on that subject in immediate juxtaposition in the Vth amendment with the one we are construing, was left out and this was taken. It may possibly violate some of those principles of general constitutional law which, if we were sitting in review of a Circuit Court of the United States, as we were in the Topeka case, 20 Wall., 655, we could take jurisdiction of. But however this may be, or under whatever other clause of the Federal Constitution we may review the case, it is not possible to hold that where, by the laws of the state, the party aggrieved has, as regards the issues affecting his property, a fair trial in a court of justice, according to the modes of proceeding applicable to such case, that he has been deprived of that property without due process of law." (96 U. S., 97.)

The proposition laid down by Mr. Justice Miller in *Davidson* v. *New Orleans* has been followed and approved in the following cases. The objection of the aggrieved party in each case is briefly mentioned.

In *Corry* v. *Campbell*, 24 S. C., 926 (1878), (from Ohio Sup. Ct.), merely general objections were filed: "Repugnant to the XIVth Amendment to the Constitution of the United States."

In *Kelly* v. *Pittsburg*, 104 U. S., 78 (from Sup. Ct. Penn., 1881), appellant's farm lands were taxed for municipal purposes, and appraised much in excess of their true value; but an appeal to board of review was provided by the state law. Held due process.

In *Hagar* v. *Reclamation Dist.*, 111 U. S., 701 (California, 1883), appellant complained that he had no opportunity to object before or at the time the assessment was made; but as the assessment could, under California

Practice, be collected only by suit, where owners were notified and might defend, held due process of law.

In *Head* v. *Amoskeag Mfg. Co.*, 113 U. S., 9. New Hampshire Sup. Ct., appellant objected that his property was taken without due process of law for private use by being flowed for mill purposes. The court below heard evidence as to damages, and appointed commissioners to assess them. Held due process of law.

In *Wurts* v. *Hoagland*, 114 U. S., 606 (New Jersey, 1884), under a New Jersey statute, five owners of marsh lands petitioned for drainage at expense of themselves and other owners. The court appointed commissioners to determine what lands were benefited, and should be assessed, and owners had right to be heard in court. Held, due process of law.

In *C. N. O. & T. P. R. R.* v. *Kentucky*, 115 U. S., 321 (Ky. Tax Cases), the railroad complained that it was taxed in different class from other property owners, and that assessment was spread without notice to it. Held, that due process of law did not mean judicial proceedings. Notice by statute, of the meetings of the Board of Equalization was sufficient.

In *Kirtland* v. *Hotchkiss*, 100 U. S., 491, the plaintiffs in error sought to restrain the collection of a tax against his real estate in Connecticut, assessed by reason of his ownership of certain bonds. The right to tax a debt, secured by mortgage in another state, was questioned. The court quoting from *Bank* v. *Billings*, 4 Pet., 563, said:

> "This vital power (of taxation) may be abused, but the Constitution of the United States was not intended to furnish the corrective for every

> abuse of power which may be committed by the state governments." "So long as the state, by its system of taxation does not intrench upon the legitimate authority of the Union, or violate any right recognized or secured to the citizen by the Constitution of the United States, this court, as between a citizen and his state, can afford no relief against state taxation, however unjust, oppressive or onerous."

In *Spencer* v. *Merchant*, 125 U. S., 345 (N. Y. Sup. Ct., 1887), appellants objected to a special assessment because (1) it was an attempt to validate a void assessment, (2) it was exorbitant, (3) it included interest and expense of collecting parts of old assessment. This case is quite similar, in some of its facts, to the case at bar, though it goes much farther than is necessary for our purposes in sustaining the action of the State Court. A public improvement made under a statute of New York providing for such works, to be paid for by special assessment. A number of the property owners refused to pay the assessment, and as to their lots the charge was carried forward, on the tax books, as unpaid taxes, for five years, when the statute under which the assessment was levied was declared unconstitutional. Note that it was the statute that was declared unconstitutional, and not a part of an ordinance, as in the case at bar. Thereupon the New York Legislature passed a new statute directing that this specific deficiency should be reassessed upon the specific lots whose shares of the original assessment had not been paid, together with accrued interest and costs incurred in the proceedings. The appellants objected that this proceeding was repugnant to the United States Constitution, because it was an attempt

to validate a void assessment, and to levy an assessment after the work had been done under a void assessment and void statute, and that the charge was exorbitant and excessive. It was also objected that the Legislature had not left it to any jury or commissioners to determine how much money had to be raised, or on what property it should be assessed. In the case at bar it is complained that it was left to such commissioners. It seems that persons asked to pay taxes are hard to please. The court said:

> "The act of 1881 determines absolutely and conclusively the amount of tax to be raised and the property to be assessed and upon which it is to be apportioned. Each of these things was within the power of the Legislature whose action cannot be reviewed in the courts upon the ground that it acted unjustly or without appropriate and adequate reason. The legislature may commit the ascertainment of the sum to be raised and of the benefited district to commissioners, but is not bound to do so, and may settle both questions for itself. * * * The landowner was given a hearing, so there was no constitutional objection in that respect. Nor was that hearing illusory. We think the act was constitutional. * * * If the Legislature provides for notice to and hearing of each proprietor, at some stage of the proceedings, upon the question what proportion of the tax shall be assessed upon his land, there is NO TAKING OF HIS PROPERTY WITHOUT DUE PROCESS OF LAW. The statute of 1881 afforded the owners notice and hearing upon the question of the equitable apportionment among them of the sum directed to be levied upon all of them, and thus enabled them to contest the constitutionality of the statute; and that was all the notice and hearing to which they were entitled."

In *Bell's Gap R. R.* v. *Pennsylvania*, 134 U. S., 233 (1889), Pennsylvania levied a three-mill tax on the FACE VALUE of all corporate stocks and securities, to be paid for by the corporation, and kept out of dividends. Objected to on the ground that the FACE values were very divergent from the real values. Held, that "Be that as it may, the law does not make any discrimination in this regard which the state is not competent to make."

> "As to want of notice to the owners of the bonds * * * it is urged that it is a taking of the bondholders' property without due process of law. We cannot see it in this light. * * * It involves no violation of due *process* of law when it is executed according to the customary *forms* and established *usages*, or in subordination to the principles which underlie them."

In *Lent* v. *Tillson*, 140 U. S., 316 (California Sup. St., 1890), an assessment was levied to meet the cost of work done under an act of the California Legislature to widen Du Pont street, San Francisco. It was objected that one of the commissioners who made the assessment roll was an interested party, that alterations in the report were irregularly made, and that the appraisement was not fair or just. Held that none of these objections involved any federal question. Mr. Joseph H. Choate appeared for the plaintiffs in error, and A. H. Garland for the defendants in error. The court held, in regard to "due process of law," that

> "Ample opportunity was given to all persons interested to test, in a court of competent jurisdiction the fairness and legality of any assessment proposed to be made upon their property for the purposes indicated by the statute. * * * If we had any doubt of the correctness of these views we should

accept the interpretation which the highest court of the state places upon the statute. * * * We must assume that inferior tribunals of the state will give effect to such enactment as interpreted by the highest court of the state." "It is contended, however, that the act was *so administered* as to result in depriving the plaintiffs of their property without due process of law. This contention is material only so far as it involves the inquiry as to whether the tribunals charged by the statute with the execution of its provisions acquired *jurisdiction* to proceed in respect to the lots or lands in question and the owners thereof. Jurisdiction was, of course, essential before plaintiff's property could be burdened with the assessment; but errors in the mere administration of the statute, not involving jurisdiction of the subject and of the parties could not justify this court, in its re-examination of the judgment of the State Court, upon writ of error, to hold that the state had deprived, or was about to deprive the plaintiffs of their property without due process of law."

In *Marchant* v. *Penn. R. R. Co.*, 153 U. S., 380 (from Penn. Sup. Ct., 1893), plaintiffs in error sought to recover for damages sustained by reason of defendant's building, and elevating its tracks along the street in front of plaintiff's lands. None of plaintiff's land was taken. The State Court held that while a plaintiff could recover for land taken, he could not recover for lands damaged under such circumstances.

This court said:

"It is sufficient for us in the present case to say that even if the plaintiff could be regarded as having been deprived of her property, the proceedings that so resulted were in due process of law. The plaintiff below had the benefit of a full and fair trial in the several courts of her own state. In those courts her rights were measured, not by laws made to affect her individually, but by general provisions of law applicable to all those in like condition."

In *Watson* v. *Nevin*, 128 U. S., 578, and *Roach* v. *Nevin*, 128 U. S., 578 (from Ky. Ct. App., 1888), appellants objected to an assessment under a statute of Kentucky providing that streets might be laid out at the cost of the abutting owners, the cost to be assessed in proportion to the areas of the abutting lots, with an addition for corner lots. The statute provided for notice by publication, and hearing of objections before the city engineer or his deputy, the tax to be enforced by the courts. The court followed *Davidson* v. *New Orleans*, and held that there was opportunity to the objectors to be heard, and therefore due process of law.

In *Huling* v. *Kaw Valley R. R.*, 130 U. S., 559, the plaintiff in error sued for trespass to lands which the defendant railroad acquired by condemnation. Plaintiff claimed that there was not due process of law, in that the railroad merely published notice that it would ask the county commissioners to lay out a right of way for it through certain sections, which was done, and the value as fixed by the commissioners paid into the county office. Held, that as opportunity was given to appear and defend, though only notice was by publication, there was due process of law.

In *Winona & St. Peter Land Co.* v. *Minnesota*, 159 U. S., 526, the legislature of Minnesota enacted a statute directing its assessors to put on the tax lists property which had escaped taxation in past years. Certain railroad lands which were exempt in the hands of the railroad had been under contract several years. They were taxed. There was no notice, except by passage of the statute, but the owners appeared and defended. The Minnesota statute provided for the collection of delinquent taxes by

application to the court for judgment and tax sale, exactly as in Illinois. The court said:

> "We think this opens to the property owner full opportunity for defense and that he can raise every objection to which, in law, he is entitled. * * * Questions of this kind have been repeatedly before this court, and the rule in respect thereto often declared. That rule is that a law authorizing the imposition of a tax or assessment upon property according to its value does not infringe the XIVth amendment to the Constitution * * * if the owner has an opportunity to question the validity or the amount of it either before that amount is determined or in subsequent proceedings for its collection."

In Illinois the owner has two such opportunities—once in the assessment proceedings and again upon application for judgment of sale for delinquent assessments. Either alone would be "due process of law."

In *Eldridge* v. *Trezevant*, 160 U. S., 452 (from La., 1895), plaintiff in error complained that the defendant constructed a large levee along the banks of the Mississippi on plaintiff's lands, and that the laws of Louisiana provided no means of ascertaining or paying the damage thereby sustained. The court decided:

> "With the admission that under the state constitution and laws as construed by the highest court of the state the plaintiff was not entitled to the remedies he sought, we are requested to hold that he can obtain relief by invoking in the Circuit Court of the United States the protection of the 14th amendment to the Constitution of the United States, which declares that no state shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. * * * The subject-matter of such rights and regulations falls within the control of the states, and the provisions of the 14th amendment are satisfied if, in cases like the present one, the state law, with its benefits and its obligations, is *impartially administered*."

In *Fallbrook Irr. Dist.* v. *Bradley*, 164 U. S., 112 (Cal., 1896), this was a test case in which it was claimed that a California Irrigation District law provided for the taking of property without due process of law. The case was argued by Benjamin Harrison for the appellants and Joseph H. Choate for appellees. The statute authorized supervisors to determine what land, that might be irrigated from a common source, should pay for the improvement. The Supreme Court held that the findings of the supervisors were conclusive, that "it was not constitutionally necessary in such cases to give a rehearing or an appeal." As to notice and hearing, the court decided:

> "It never was intended that this court should, as the effect of the 14th amendment, be transformed into a court of appeal where all decisions of state courts involving merely questions of general justice and equitable consideration in the taking of property, should be submitted to this court for its determination.
>
> We think the right to a hearing in regard to all these facts is given by the act, and that it has been practically so construed by the Supreme Court of California."
>
> "The first two sections provide for petition and hearing. The petition is to be signed by a majority of the holders of land capable of one mode of irrigation, etc. This petition is to be presented to the board of supervisors at their next meeting and notice of intended presentation must be published two weeks. The board shall hear the same and shall establish boundaries."
>
> "Thus the act provides for a hearing of the land holders both as to the question whether his land will be benefited by the proposed irrigation, and when that has been decided in favor of the benefits, then upon the question of the valuation and assessment of and upon his land included in the district. Our conclusion is that the act as construed with reference to the objections considered under this third head is unassailable."

In *C., B. & Q. R. R.* v. *Chicago*, 166 U. S., 226 (Ill., 1896), the plaintiff in error complained that a street had been opened across its land without just compensation, the jury awarding but one dollar damages. The court, in its opinion, intimated that the right to "due process of law" included the right to "due compensation" for "private property taken for public uses," although former decisions had clearly distinguished the two rights. Thus in *Davidson* v. *New Orleans*, it was said:

> "The federal constitution imposes no restraints on the states in regard to unequal taxation. If private property be taken for public uses without just compensation it must be remembered that when the XIVth amendment was adopted the provision on that subject in immediate juxtaposition in the amendment with the one we are construing WAS LEFT OUT AND THIS WAS TAKEN."

But this C., B. & Q. case decided that, even under the new construction of "Due Process of Law," the question of benefits could be examined only by the jury, and in accordance with the course of the common law, and the assessment, or condemnation, was sustained.

In *Castillo* v. *McConnico*, 168 U. S., 674, back taxes for several years were assessed against the lands of plaintiff in error, and the only service on him was by publication of notice, using his initials instead of his Christian name, and notifying the owner "or *her* heirs."

> "The vice which underlies the entire argument of plaintiff in error arises from a failure to distinguish between the essentials of due process of law under the 14th amendment, and matters which may or may not be essential under the terms of a state assessing or taxing law."

Held, that the error in, or omission of the name, was a mere state matter, and raised no question under the 14th amendment.

In *Bellingham B. & B. C. R. R.* v. *New Whatcomb*, 172 U. S., 314, as in *Spencer* v. *Merchant* (125 U. S., 345), there was a re-assessment to pay for the improvement, the first assessment having been declared void. Contract for the work was let in 1890 and work completed in October of that year. An assessment was then levied on abutting property. Suit was brought to foreclose the liens thus created, but the state courts annulled the assessment on the ground that the statute under which it was assessed was void because it did not provide for hearing as to benefits. This was in 1895.

But in 1893 the legislature (of Washington) had passed a general act providing for the re-assessment of the cost of local improvements in cases where the original assessments "have been or may be directly or indirectly set aside, annulled or declared void by any court." The new statute provided for publication of notice ten days before date set for hearing before the CITY COUNCIL. The court said:

> "A re-assessment implies, not merely the fact of the improvement, but also that one attempt has been made to collect the cost and failed. Inquiry had been had in the courts and the one assessment had been set aside. The facts were known. Ten days' time does not seem unreasonably short to present objections to a re-assessment. And there is nothing in the case of the plaintiff in error to suggest any injustice. The improvements made on the street on which its lots abutted consisted in grading, planking and sidewalking. It is highly improbable that it could have been ignorant of the fact that they were being made. It MUST HAVE KNOWN ALSO THAT

SUCH IMPROVEMENTS HAVE TO BE PAID FOR, AND THAT THE ORDINARY METHOD OF PAYMENT IS BY LOCAL ASSESSMENT ON THE PROPERTY BENEFITED. Litigation followed which was carried to the Supreme Court. * * * It may be that the court was advised that the plaintiff in error had contributed to the cost of that litigation."

In *Dewey* v. *Des Moines*, 173 U. S., 193, the Iowa courts had confirmed a special assessment and adjudged the lot owners liable personally for such portion of the cost assessed as should not be paid or realized out of sale of the lands. Plaintiff in error, a non-resident, sought to enjoin the enforcement of the judgment as a personal liability. The court held that so far as a personal judgment was rendered against a non-resident, not served with process, it was unconstitutional, and reversed it to that extent only.

"The two questions, the one as to the invalidity of the personal judgment, and the other as to the invalidity of the assessment on the lots, are not in any wise necessarily connected. * * * The assessment upon the lots might be valid while the provision for a personal judgment might be void, each depending upon different principles; and the question as to the invalidity of the personal judgment might, as in this case, be raised and argued without in any manner touching the question as to the invalidity of the assessment upon the lots. * * * Upon these facts we are compelled to hold that we are confined to a discussion of the *only* federal question which the record presents, viz.: the validity of the personal judgment against the plaintiff in error."

In *Weyerhauser* v. *Minnesota*, 176 U. S., 550, plaintiff in error complained that the assessment on his property has been increased without notice to him or opportunity to defend. The governor of the state had.

under the Minnesota statute, raised the assessment on what he considered undervalued property. The court held:

> "The complaint of plaintiff in error seems to be that hearing before the governor was not provided. If the basis of this is that the owner of property must have notice of every step in taxation proceedings we agree with the Supreme Court of the state, that it is untenable. If the basis of the complaint is that the governor acted judicially and plaintiff in error was entitled to have notice, and be heard before he rendered judgment, it is also untenable. The governor does not act judicially. * * * But supposing the governor's act is a judgment; what is substantial comes afterwards; and if, against what may be detrimental in that the land owner CAN BE HEARD, he is afforded due process of law within the rule announced by the authorities. That the land owner MAY be heard is decided by the Supreme Court of the state. 'Within twenty days after the last publication of the delinquent list any person may, by answer, interpose any defense or objection he may have to the tax.'"

Please note. Just such a provision is in force in the Revenue Act of Illinois, under which this assessment will have to be collected.

> See Starr & Curtiss' Rev. Stat. Ill., Ed. 1896, page 3470, Sec. 193.

Magoun v. *Ill. Trust & Savings Bank*, 170 U. S., 283, is the Illinois inheritance tax case. The statute was alleged on writ of error to this court to be unconstitutional because estates of different amounts, and passing to relatives of different degrees of relationship, were taxed at different rates. The court quoted from Mr. Justice Field in *Mobile* v. *Kimball*, 102 U. S., 704:

> "This court is not a harbor in which can be found a refuge from ill-advised, unequal and oppressive

> state legislation. It is not necessary to say that hardship, impolicy or injustice of state laws is not necessarily an objection to their constitutional validity."

In the following cases this court has held that there was a taking of property without due process of law:

In *Roller* v. *Holly*, 176 U. S., 398, the plaintiff in error complained that judgment had been rendered foreclosing his property without his having opportunity to defend—without due process of law. He was a non-resident, and notice was served on him, personally, five days before the time named therein for him to appear and defend. It would have required four days for him to reach the place of trial, and the fifth day was Sunday. Held not due process of law.

In *C., M. & St. P. R. R.* v. *Minnesota*, 134 U. S., 418 (1889), the Minnesota legislature enacted a statute providing that its railroad commission might fix railroad tariffs which should be not merely advisory, but conclusive and binding on the railroads. The court decided:

> "No hearing is provided for, no summons or notice to the company before the commission has found what it has to find and declared what it is to declare, no opportunity for the company to introduce witnesses before the commission, in fact nothing which has the semblance of due process of law."

Even in this case Justices Bradley, Gray and Lamar dissented, and Justice Miller concurred "with some hesitation."

In *Norwood* v. *Baker*, 172 U. S., 269, the plaintiff sought in the United States Circuit Court an injunction against an assessment levied upon abutting property ac-

cording to frontage, without reference to benefits. Injunction issued.

> "The judgment of the Circuit Court must be affirmed *on the ground* that the assessment against the plaintiff's abutting property was under a rule which excluded any inquiry as to special benefits and the necessary operation of which was to take private property for public use without compensation." Mr. Justice Brewer dissented.

Please note: No question is expressly raised in the case at bar concerning any taking of private property for public use without compensation. That article of the United States Constitution was not mentioned. It is in Art. V of the amendments that the taking without just compensation is prohibited, and that prohibition is a limitation on FEDERAL authority only. The next preceding clause was taken and this one left when the 14th amendment was adopted.

Note also that in the case at bar the ordinances and statutes DID provide for hearing as to benefits, and the plaintiffs in error appeared and were heard on that point.

This last case (*Norwood* v. *Baker*) was not heard on appeal from a state court (in which case only federal questions would be considered), but it was an appeal from the United States Circuit Court for Ohio. All questions were before the court, whether federal questions or not. In fact the court considers at great length the provisions of the Ohio Constitution. It might well have been decided just as it was on either of two grounds, not involving "compensation" under the 14th amendment, first, on the ground that the proceeding was contrary to the *State* Constitution because private property was taken without compensation. The difference between the question con-

sidered in reviewing a state court and in reviewing a United States Circuit Court is noted in the *Davidson* v. *New Orleans* case, 96 U.S., 97 quoted above p. 32; second, on the ground that no hearing was provided—no "adversary proceeding," as it was called in the Davidson case—and therefore there was no due process of law. The reasons actually advanced for the decision seem to make a considerable advance on the older authorities, but do us no harm in the case at bar; for whether the objectors were entitled to merely a *hearing* as to benefits, or to the actual *payment* of the benefits they cannot complain in this proceeding for the simple reason that they have had both hearing and payment. We *believe* that they were entitled merely to "due *process*"—"due *procedure*," due "formalities," and that it rested with the state and its officers and juries to see that those forms, proceedings and processes were not denied; we believe that the Federal Constitution guarantees the forms only, and the state must protect its own people and see that those forms are converted into reality. But that belief is not an essential part of our argument nor of our case. Even though the Federal Constitution guarantees *more* than mere process, more than due proceedings, and more than mere due form—even though it guarantees to the citizens of the state "just compensation" actually paid to him, this judgment of the Illinois Supreme Court should still be affirmed, for these objectors have actually received their benefits, and more than just compensation, and the record so shows.

In one of their assignments of error the plaintiffs in error complain that this assessment was levied AFTER the improvements were made—they complain that they received their benefits *before* they were taxed for them. If

anything depends on the time for levying the assessment —whether before or after the improvement is made—it would seem that their objection would at least appear stronger if they had been taxed *before* they received their compensation. Just such objection was made in the case of *Backus* v. *Fort St. Union Depot Co.*, 169 U. S., 557, but the court there held that if *provision was made* for afterwards paying just compensation that was sufficient to meet the requirements of the Federal Constitution—that the compensation need not be paid at the time the property was taken.

We suspect that the owners taxed are sometimes hard to please. If they are taxed first, before the improvement is made, they object that their property is taken without compensation; and if the improvement is put in first, as in the case at bar, and in *Spencer* v. *Merchant* (125 U. S., 345), or *Bellingham* v. *New Whatcomb* (172 U. S., 314), they complain that the assessment is without due process of law. The two cases last mentioned decide that a re-assessment MAY be made if the first is declared void.

THE FOLLOWING ARE THE VARIOUS STEPS, IN BRIEF, WHICH HAVE BEEN TAKEN IN THE STATE COURTS BEFORE THE PRESENT ASSESSMENT WAS FINALLY CONFIRMED. THEY WOULD SEEM TO BE SUFFICIENT TO CONSTITUTE DUE PROCESS OF LAW:

(1) Illinois Constitution authorized special assessments, Art. IX, Sec. 9.

(2) Illinois Constitution, Art. VI, Sec. 18, gave County Courts jurisdiction in assessment matters.

(3) Act of 1873 incorporated the West Chicago Park Commissioners and authorized them to levy assessments. (S. & C. Rev. Stat., 2864 ff.)

(4) Act of 1895 provided method of hearing objections to assessment. (S. & C. Rev. Stat., 2907 ff.)

(5) Article IX of the Cities and Villages Act was expressly adopted for park boards to follow in court proceedings providing for petition, notice, objections, jury and hearing. (S. & C. Rev. Stat., 736 ff.)

(6) Petition by majority of the abutting owners for this improvement. (Record, page 94.)

(7) Ordinance of park board ordering the improvement made to be paid for by special assessment. (Record, p. ~~[illegible]~~ 95.)

(7) Assessment roll assessing (provisionally) the cost of the improvement according to benefits. (Record, 12 to 26.)

(9) Petition to the County Court asking to have said provisional assessment confirmed. (Record, 3.)

(10) Publication of notice of hearing five successive days—September 1st to 5th, inclusive,—announcing that hearing would be had on the 14th of September. (Record, 57.)

(11) Posting of notices August 27th for hearing September 14th. (Record, 57.)

(12) Mailing, on the 2d day of September, of notices of hearing on the 14th of September, to all known owners. (Rec., 58.)

(13) Order extending time to file objections to the 23d of September, 1895. (Record, ~~[illegible]~~ 45.)

(14) Objections filed and general appearance entered by these objectors. (Record, 29 to 44.)

(15) Further objections. (Rec., 46.)

(16) Amended objections filed by these objectors. (Record, 48.)

(18) Legal objections (as distinguished from questions of benefits which are for the jury) sustained by the County Court, April 27, 1897. (Record, 67.)

(19) Appeal by petitioners to the Illinois Supreme Court. (Record, 69.)

(20) Decision in the Illinois Supreme Court reversing and remanding. (Record, 71; 171 Ill., 146.)

(21) Petition for rehearing in the Supreme Court denied. (171 Ill., 146.)

(22) Case remanded to the County Court and reinstated. (Record, 71.)

(23) Additional objections filed *nunc pro tunc.* (Record, 74.)

(24) Order overruling all "legal objections" and directing that jury be called to try questions of benefits. (Record, 81.)

(25) Jury was selected, heard evidence during two days and rendered verdict for petitioners. (Record, 83.)

(26) Order confirming assessment. (Record, 85.)

(27) Motion for new trial (not involving any federal question) overruled. (Record, 86.)

(28) Judgment of confirmation. (Printed Record, 91)

(29) Appeal prayed and allowed to Illinois Supreme Court. (Record, 85.)

(30) Bill of exceptions signed by the court preserving evidence as to benefits not printed in the record. (See index to Printed Record showing omissions.)

(31) Assignments of error in the Illinois Supreme Court. (Record, 216-218.)

(32) Argument and hearing in the Supreme Court. (*Farrell et al.* v. *West Chicago Park Commissioners*, 182 Ill., 250.)

(33) Decision affirmed in the Supreme Court. (182 Ill., 250.) (Record, 228.)

This assessment has been before the Supreme Court of Illinois, on appeals by various parties, no less than seven times, as follows:

(1) *Culver* v. *People*, 161 Ill., 89.

(2) *Farrell* v. *Town of West Chicago*, 162 Ill., 280.

(3) *Connor* v. *Town of West Chicago*, 162 Ill., 287.

(4) *West Chi. Park Commrs.* v. *Farber*, 171 Ill., 146.

(5) *Cummings* v. *West Chi. Park Commrs.*, 181 Ill., 136.

(6) *Culver* v. *West Chi. Park Commrs.*, 182 Ill., 134.

(7) *Farrell* v. *West Chi. Park Commrs.*, 182 Ill., 250.

IN EACH AND EVERY STEP OF THIS PROCEEDING THE RIGHTS, PRIVILEGES AND IMMUNITIES OF THE PLAINTIFFS IN ERROR WERE CAREFULLY GUARDED BY DUE AND AMPLE PROCESS OF LAW.

The assessment can be defended by separating the questions into single propositions and considering each separately, as if independent, and then combining the results, and the closer the analysis and the more careful the consideration that is given to each proposition, the more apparent will it

be that our proceedings have violated no provision of the Constitution of the United states or any amendment thereof. We invite the most careful study of the Constitution of Illinois, of the statutes passed thereunder, of the ordinances of the West Chicago Park Commissioners, of the pleadings in the County Court, of the appeal to the Illinois Supreme Court, and of the careful and discriminating judgment there rendered. If in the whole course of the proceeding, during these seven years, these plaintiffs in error have been denied any constitutional right the defect has not yet been definitely pointed out to us.

If, on the other hand, counsel wish to confuse this court with a jumble of talk about "oppression" or denial of "rights to the plaintiffs" we most respectfully beg to suggest that their objections are not capable of accurate definition, and amount to no more than general dissatisfaction with the results of the litigation. As Mr. Justice MILLER said in *Davidson* v. *New Orleans* (96 U. S., 97):

> "It would seem from the character of many of the cases before us and the arguments made in them, that the clause under consideration (14th amendment) is looked upon as a means of bringing to the test of the decision of this court the abstract opinions of every unsuccessful litigant in a state court, of the justice of the decision against him and of the merits of the legislation on which such decision was founded."

VI.

CONCLUSION.

In conclusion we submit to the court:

First. That no federal question is properly before the court.

Second. That this court will not undertake to correct errors in respect to mere details of special assessments if the state court has given a fair hearing to the parties assessed.

Third. That the ordinance for the improvement was and is valid, even though the clause providing for installments was invalid.

Fourth. That the Park Act of 1895, violated no provision of the United States' Constitution, for it was merely remedial and not penal; and even if it did violate that constitution, the objection was not properly raised or considered in the Illinois Supreme Court.

Fifth. That the objectors had their full and complete measure of "due process of law" when the County Court found that their property had "not been assessed more than it had been specially benefited, and that said assessment roll should be confirmed," and they cannot now deny that they have enjoyed all the "rights, privileges and immunities" to which they were entitled under the Constitution of the United States.

Sixth. That after the repeated and exhaustive hearings, upon all the objections on behalf of plaintiffs in er-

ror, that ingenious counsel have been able to invent, in the tribunal established by the constitution and laws of Illinois, clothed with special jurisdiction of the whole subject of assessments and taxes, there can remain no question for the review of this court under the fourteenth amendment to the Constitution of the United States, or under Section 709 of the Judiciary Act of Congress.

Our motion, therefore, is that the writ of error be dismissed.

ROBERT A. CHILDS,
CHARLES HUDSON,
Counsel for Defendant in Error.

Copies of Statutes.

For ready reference, the two ordinances of the park authorities are here printed, with the provisions of the Illinois Constitution and Statutes concerning special assessments.

CONSTITUTION OF ILLINOIS. ART. IX. SEC. 9.

ASSESSMENTS.

Section 9. The General Assembly may vest the corporate authorities of cities, towns and villages with power to make local improvements by special assessment, or by special taxation of contiguous property or otherwise. For all other corporate purposes all municipal corporations may be vested with authority to assess and collect taxes, but such taxes shall be uniform in respect to persons and property within the jurisdiction of the body imposing the same.

CONSTITUTION OF ILLINOIS. ART. VI, SEC. 18.

COUNTY COURTS.

County Courts shall be courts of record, and shall have original jurisdiction in all matters * * * for the collection of taxes and assessments and such other jurisdiction as may be provided for by general law.

Act of 1873.

(S. & C. Rev. Stat., Ed. of 1896, page 2864 ff.)

32. Proceedings for Park Improvements. § 3. In case such board of park commissioners shall desire to improve any boulevard or pleasure way under their control, or any part thereof, or if such commissioners shall deem it necessary, for drainage purposes, to construct a sewer or sewers through any lands or streets not under their control, to connect with any natural or artificial outlet, they shall make plans and specifications for such contemplated improvement. In case such contemplated improvement is the construction of a sewer, they shall carefully designate the line thereof, and shall prepare estimates of the cost of such contemplated improvement, and transmit such plans, specifications and estimates to the corporate authorities of the town where such improvement will be situated. Such corporate authorities may, upon the receipt of such plans, specifications and estimates, at their next meeting, whether the same be a regular or special meeting, or at any succeeding meeting, or at a special meeting called for that purpose, determine by ordinance, to be entered upon the records of such town, whether such improvement shall be made or not: if they shall determine to make the same, they shall also prescribe that the same shall be made by special assessment or special taxation of contiguous property: provided, that the tax authorized by section 1 of this Act shall not exceed the sum of $100,000 annually. If such ordinance shall provide that such improvement shall be wholly or in part made by special assessments, they shall direct the supervisor of such town

to file a petition in the name of the town, in the county court of his county, for proceedings to assess the cost of such improvement; such petition shall recite the ordinance for the proposed improvement and the plans, specifications and estimates of the cost thereof, and pray that the cost thereof may be assessed in the manner prescribed by law. The proceedings to levy and collect such assessment subsequent to the filing of such petition, shall in all things, as near as may be, conform to the provisions of article nine(9) of an Act of the General Assembly of this State, entitled "An Act to provide for the incorporation of cities and villages," approved April 10, 1872, and all of the provisions of said article 9, so far as applicable, shall be in force and apply to any assessment made under this Act. The clerk of such town shall perform the duties and possess the powers which are conferred upon the clerks of cities and villages under said article 9: PROVIDED, that no improvement or sewer shall be made or constructed under the provisions of this section, except upon the petition of the owners of a majority of the land fronting on the proposed improvement or sewer: PROVIDED, FURTHER, that no sewer shall be constructed under this Act through any streets belonging to any incorporated city, or to connect with any sewers within such city, unless the assent of the common council or board of public works of such city having control of the streets and sewers of such city shall be first obtained thereto.

33. WHO ARE CORPORATE AUTHORITIES. § 4. BE IT FURTHER ENACTED, that the town supervisor, clerk and assessor of such town he and they are hereby designated and constituted the corporate authorities of such

town, and they, or a majority of them, may levy the tax or any of the assessments herein authorized, in the manner and for the purposes herein provided, except in towns or villages which may have, or which shall hereafter become organized as a town or village, under any law of this state, in which case the board of trustees of such town, so organized as a village, may levy the tax, or any of the assessments herein authorized, in the manner and for the purposes herein authorized.

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Act of 1895.

(S. & C. Rev. Stat., Ed. 1896, 2907, ff.)

171. Special Assessments—Special Taxes. Be it enacted by the people of the State of Illinois, represented in the general assembly: § 1. That all and any boards of park commissioners or park authorities now existing or hereafter established for the purpose of locating, establishing, inclosing, improving or maintaining any public park, boulevard, driveway, highway or street, are hereby vested with power and authority to levy, assess and collect special assessments or special taxes on contiguous property, or general taxes, or both, or otherwise, for the purpose of improving any boulevard, highway, driveway or street which may be now or may hereafter come under their control in any manner whatsoever.

172. Powers Additional to Others. § 2. The power and authority hereby vested are hereby declared to be additional to and not in limitation of any power and authority heretofore vested in said park commissioners or park authorities.

173. Ordinance. § 3. Whenever any such improvement shall be determined upon by said park commissioners or park authorities, they shall provide for the same by ordinance to be entered upon their records, and they shall by the same ordinance prescribe whether the same shall be made by special assessment or by special taxation on contiguous property, or general taxation, or both, or otherwise.

174. SPECIAL ASSESSMENTS—PROCEEDINGS. § 4. When the ordinance under which said improvement is ordered to be made shall provide that such improvement shall be made by special assessment, the proceedings for the making and levying of the same shall be as provided hereinafter in this act.

175. CHARACTER, ETC., OF IMPROVEMENT. § 5. Such ordinance providing for said improvement shall specify the nature, character, locality and description of such improvement.

176. ESTIMATE OF COST. § 6. The said park commissioners or park authorities shall make an estimate of the cost of the improvement contemplated by such ordinance, including labor, materials and all other expenses attending the same, and the cost of making and levying the said assessment, and shall enter a report thereof upon their records.

177. ORDER FOR PROCEEDINGS IN COURT. § 7. Upon such ordinance being passed and said report made and recorded as aforesaid, said park commissioners or park authorities may order a petition to be filed by its secretary or such other officers as it may direct in the County Court of their county for proceedings to assess the costs of such improvements in the manner provided herein.

178. PETITION. § 8. Said petition shall be in the name of said park commissioners or park authorities, and shall recite the ordinance for the proposed improvement and such report of estimate of the cost thereof, and shall pray that the cost of such improvement shall be assessed in the manner provided by law.

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179. ASSESSMENT. § 9. Upon the filing of such petition it shall be the duty of said commissioners or park authorities to estimate what proportion of the total cost of said improvement will be of benefit to the public and what proportion thereof will be of benefit to the property to be benefited, and apportion the same between the district, subject to the maintenance of the park or parks under the control of said commissioners or park authorities, so that each shall bear its relative, equitable proportion, and having found said amounts, to apportion and assess the amount so found to be of benefit to the property upon the several lots, blocks, tracts and parcels of land in the proportion in which they will be severally benefited by such improvement: PROVIDED, no lot, block, tract or parcel of land shall be assessed a greater amount than it will be actually benefited.

180. ASSESSMENT ROLL. § 10. The said commissioners or park authorities shall also make or cause to be made an assessment roll in which shall appear the names of the owners, so far as known, a description of each lot, block, tract or parcel of land, and the amount assessed as special benefits thereto, and in which they shall set down as against the said park district the amount they shall have found as public benefit, and they shall certify such assessment roll to the said court at least ten days before the first day of the term at which a final hearing thereon shall be had.

181. CITY SPECIAL ASSESSMENT LAWS APPLICABLE. § 11. The remainder of the proceedings in respect to such special assessment shall be in accordance with Article IX. of the act of the general assembly, entitled, "An Act to provide for the incorporation of cities and villages,"

approved April 10, 1872, and all acts amendatory thereof, so far as the same may be applicable, and all acts provided therein to be performed by the city or village shall be performed by the said park commissioners or park authorities, and all acts provided therein to be performed by commissioners to be appointed by the court shall also be performed by said park commissioners or park authorities, and where it is therein provided that the city council, or the board of trustees, in case a village, shall be named in any of said proceedings or notices or records relating thereto, the said park commissioners or park authorities shall be named instead, and like notices of said proceedings shall be given and published by said park commissioners as is therein provided, and an affidavit of one or more of said park commissioners or park authorities of the giving of notices, and a certificate of publication of notice be filed as provided therein, and the same time shall be allowed for the filing of objections to the confirmation on the part of parties interested.

182. HEARING. § 12. In such proceedings the court shall have the same powers and authority as is provided in said Article IX for proceedings thereunder, and the hearing of the application for the confirmation of said assessment shall be had in the same manner and appeals from any judgment entered thereon shall be taken to the same court and in the same manner as provided therein.

183. COLLECTION OF SPECIAL ASSESSMENT. § 13. The said assessment roll and judgment thereon shall be certified to the officer of said park commissioners or park authorities authorized to collect said special assessment in the same manner as is provided in said Article IX., and a

like notice shall be given by said collector, and said special assessment shall be collected in the same manner as provided therein, and a like report of delinquent list made to the general officer of the county authorized to collect state and county taxes, made up in the same manner as is provided therein.

184. APPLICATION FOR JUDGMENT—WHAT LAWS GOVERN. § 14. Said general officer shall proceed to obtain judgment for said delinquent special assessment in the same manner and within and at the same time as is provided in said Article IX., and shall be governed by the same laws in respect thereto as is provided for therein.

185. SALES. § 15. Sales of property for unpaid delinquent special assessments shall be made in the same manner as provided by said Article IX., and redemption from said sales shall be made in the same manner and upon the same terms and payment of the same rates as are applicable to sales therein provided for, and officers respectively making collections of said special assessment, and making sales thereunder, shall be subject to the same rules, regulations, be entitled to the same compensation and subject to the same penalties as is provided for in said Article IX.

186. PARK COMMISSIONERS MAY BUY IN. § 16. Park commissioners or park authorities interested in the collection of any tax or assessment may become a purchaser at any sale of real or personal property to enforce the collection of the same, and may, by ordinance, authorize and make it the duty of one or more officers, to be designated by them, to attend such sales and bid thereat in behalf of said park commissioners or park authorities.

187. SUPPLEMENTAL ASSESSMENTS. § 17. New special assessments and supplemental special assessments may be levied and assessed in all cases where the same are, or may be, authorized in said Article IX., and the same shall be levied, assessed and collected as is above provided in cases of original special assessments, and all the provisioning of said Article IX. for said new assessments and supplemental assessments shall apply to such proceedings to be taken hereunder.

188. CONTRACTS. § 18. All the provisions of said Article IX. in respect to contracts for making any such improvement, and for the letting of such contracts, and in respect to the lien of said special assessments, and as to the collection by suit of said special assessments, the dividing the same into installments, and interest thereon, and the collection thereof, the payments thereon, the notice thereof, the confirmation thereof, and the payment of work done for such improvement, vouchers therefor and rights of all parties thereunder, the disposition of surplus moneys arising from such special assessments, and the payments for compensation in condemnation proceedings, and advancements to pay for private property taken or damaged from the general fund of such city or village, shall each and all be applicable to such proceedings taken by said park commissioners or park authorities.

189. CONDEMNATION PROCEEDINGS—SPECIAL ASSESSMENT. § 19. Wherever any such park commissioners or park authorities shall be vested with power to take or damage private property for any purpose whatever, and shall apply to any court for the purpose of making just compensation therefor, they may file in the same proceedings a supplemental petition praying for a special as-

sessment for the purpose of raising the amount necessary to pay the compensation and damages which may be or shall have been awarded for the property taken or damaged, with the costs of the proceedings, and thereupon the court shall have power to and shall proceed as in other cases of special assessment provided for in said Article IX, and herein: PROVIDED, that all the provisions of said article in reference to the payment for lands to be taken or damaged, and the hearing by the court in respect to said payment, and in respect to ordering writs of possession or in dismissing such condemnation proceedings, shall be applicable in such case.

190. NEW ASSESSMENTS. § 20. Where, in any case such park board or park authorities having authority to improve any street or streets , or parts thereof, and to pay for the improvement thereof by special assessment, and said improvement shall have been made or partly completed, and a special assessment levied therefor shall have been set aside by a court of competent jurisdiction, or the provision in any ordinance for the payment for said improvement by special assessment shall have failed or been declared void by any court of competent jurisdiction, then, and in any such case, the said park commissioners or park authorities are hereby vested with power to levy, assess and collect a new special assessment on property benefited by said improvement or completed portion thereof, in the same manner as in other cases, and the lots, blocks, tracts or parcels of land found benefited by said improvement or the completed portion thereof, shall each severally be liable to pay for said benefits to the same extent and in the same proportion as in other cases: PROVIDED, that

the provisions and all proceedings in respect to such new assessments shall relate to and be in force in all cases in which, at the time of the passage of this act, work has been completed or partially completed under any special assessment proceedings or attempted special assessment proceedings heretofore levied or collected or attempted to be levied and collected by any such board of park commissioners or park authorities: AND, PROVIDED FURTHER, that such new assessments in such cases shall be levied within seven years from the date of confirmation, or attempted confirmation, of such original proceedings.

191. ALLOWANCE OF CREDITS. § 21. In such proceedings for any new assessment, it shall be the duty of the said commissioners to credit on the assessment roll, at or before filing the same in court, all payments that may have been made on any previous assessment or installments thereof for said improvement by, for or on account of any lot, block, tract or parcel of land assessed therein, whether paid by sale thereof or otherwise, and any objections to the confirmation of such assessment roll shall include objections to the allowance of credits as appears by said assessment roll, if any there be.

192. LEVY, ASSESSMENT AND COLLECTION — HOW MADE. § 22. When the ordinance under which said improvements are ordered to be made shall provide that such improvement shall be made by special taxation of contiguous property, the same shall be levied, assessed and collected in the way provided in the sections of this act providing for the mode of making, levying, assessing and collecting special assessments.

ARTICLE IX. OF THE CITIES AND VILLAGES ACT.
(Rev. Stat., 736, ff.)

117. POWERS CONFERRED. § 1. That the corporate authorities of cities and villages are hereby vested with power to make local improvements by special assessment or by special taxation, or both, of contiguous property, or general taxation, or otherwise, as they shall by ordinance prescribe.

118. ORDINANCE AUTHORIZING IMPROVEMENTS—CONTENTS. § 2. When any such city or village shall, by ordinance, provide for the making of any local improvement, it shall, by the same ordinance, prescribe whether the same shall be made by special assessment or by special taxation of contiguous property, or general taxation, or both.

133. SPECIAL TAX, HOW COLLECTED. § 17. When said ordinance under which said local improvement shall be ordered shall provide that such improvement shall be made by SPECIAL TAXATION of contiguous property the same shall be levied, assessed and collected in the way provided in the sections of this act providing for the mode of making, levying, assessing and collecting special assessments; * PROVIDED, that no special tax shall be levied or assessed upon any property to pay for any local improvement in an amount in excess of the special benefit which such property shall receive from such improvement. Such ordinance shall not be deemed conclusive of such benefit, but the question of such benefit and of the amount of such special tax shall be subject to the review and determination of the County Court, and be tried in

the same manner as in proceedings by special assessment."

(NOTE.— Amendment of 1895 added the part after asterisk.)

134. HOW MADE. § 18. When the ordinance under which said local improvement is ordered to be made shall provide that such improvement shall be wholly or in part made by special assessment, the proceedings for the making such special assessment shall be in accordance with the sections of this act (article) from 18 to 51, inclusive.

135. ORDINANCE FOR LOCAL IMPROVEMENTS—SIDEWALKS—OWNERS' RIGHTS. § 19. Whenever such local improvements are to be made wholly or in part by special assessment, the said council in cities, or board of trustees in villages, shall pass an ordinance to that effect, specifying therein the nature, character, locality and description of such improvement, either by setting forth the same in the ordinance itself or by reference to maps, plats, plans, profiles or specifications thereof on file in the office of the proper clerk, or both: PROVIDED, that whenever any such ordinance shall provide only for the building or renewing of any sidewalk, the owner of any lot or piece of land fronting on such sidewalk shall be allowed fifteen days after the time at which such ordinance shall take effect in which to build or renew such sidewalk opposite his land, and thereby relieve the same from assessment: PROVIDED, that the work so to be done shall in all respects conform to the requirements of such ordinance.

136. COMMISSION TO ESTIMATE COST. § 20. The city council or board of trustees shall appoint three of its mem-

bers, or any other three competent persons, who shall make an estimate of the cost of the improvement contemplated by such ordinance, including labor, materials, and all other expenses attending the same, and the cost of making and levying the assessment, and shall report the same in writing to said council or board of trustees.

137. REPORT—APPROVAL—ORDER FOR PETITION.—§ 21. On such report being made, and approved by the council or board of trustees, as the case may be, it may order a petition to be filed by such officer as it shall direct, in the County Court of its county, for proceedings to assess the cost of such improvement in the manner provided in this act.

138. PETITION BY MUNICIPALITY — CONTENTS. § 22. The petition shall be in the name of the corporation, and shall recite the ordinance for the proposed improvement and the report of such commission, and shall pray that the cost of such improvement may be assessed in the manner prescribed by law.

139. APPOINTMENT OF COMMISSIONERS — OATH. § 23. Upon the filing of such petition the court shall appoint three competent persons as commissioners, who shall take and subscribe an oath, in substance as follows:

STATE OF ILLINOIS, } ss.
——— COUNTY. }

We, the undersigned, commissioners, appointed by the County Court of ..... County, to assess the cost of ..... (here state in general terms the improvement), do solemnly swear (or affirm, as the case may be), that we will a true and impartial assessment

make of the cost of said improvement upon the city (or village) of ....., and the property benefited by such improvement, to the best of our ability, and according to law.

140. DUTY OF COMMISSIONERS—ASSESSMENT OF BENEFITS. § 24. It shall be the duty of such commissioners to examine the locality where the improvement is proposed to be made, and the lots, blocks, tracts and parcels of land that will be specially benefited thereby, and to estimate what proportion of the total cost of such improvement will be of benefit to the public, and what proportion thereof will be of benefit to the property to be benefited, and apportion the same between the city or village and such property, so that each shall bear its relative equitable proportion; and having found said amounts, to apportion and assess the amount so found to be of benefit to the property upon the several lots, blocks, tracts and parcels of land in the proportion in which they will be severally benefited by such improvement: PROVIDED, that no lot, block, tract or parcel of land shall be assessed a greater amount than it will be actually benefited: AND, PROVIDED, FURTHER, that it shall not be necessary for said commissioners to examine the locality except where the ordinance provides for the opening, widening or improvement of streets and alleys.

141. MAP. § 25. (Repealed by L. 1873, p. 66, April 25, July 1.)

142. ASSESSMENT ROLL—RETURN. § 26. They shall also make or cause to be made an assessment roll, in which shall appear the names of the owners, so far as known, a description of each lot, block, tract or parcel of land, and the amount assessed as special benefits thereto,

and in which they shall set down as against the city or village the amount they shall have found as public benefit, and certify such assessment roll to the court by which they were appointed, at least ten days before the first day of the term at which a final hearing thereon shall be had.

143. NOTICE OF ASSESSMENT BY MAIL—POSTING AND PUBLICATION. § 27. It shall also be the duty of such commissioners to give notice of such assessment, and of the term of court at which a final hearing thereon will be had, in the following manner:

First. They shall send by mail to each owner of premises assessed, whose name and place of residence is known to them, a notice substantially in the following form:

Mr. ..... Your (here give a short description of the premises) is assessed $..... for public improvement. The assessment roll will be returned to the ..... term of the ..... court of ..... County (here give date).

.....
Commissioners.

Second. They shall cause at least ten days' notice to be given, by posting notices in at least four public places in such city or village, two of which shall be in the neighborhood of such proposed improvement; and when a daily newspaper is published in such city or village, by publishing the same at least five successive days in such daily newspaper, or if no daily newspaper is published in such city or village, and a weekly newspaper is published there, then at least once in each week for two successive weeks, in such weekly newspaper, or if no daily or weekly newspaper is published in such city or village, then at least

once in each week for two successive weeks in a newspaper published in the county in which such city or village is situated. The notice may be substantially as follows:

SPECIAL ASSESSMENT NOTICE.

Notice is hereby given to all persons interested that the city council (or board of trustees, as the case may be), of ..... having ordered that (here insert a brief description of the nature of the improvement), the ordinance for the same being on file in the office of the ..... clerk, have applied to the ..... Court of ..... County for an assessment of the cost of said improvements, according to benefits, and an assessment thereof having been made and returned to said court, the final hearing thereon will be had at the ..... term of said court, commencing on .... day of ....., A. D. 18.. All persons desiring, may then and there appear and make their defense.

(Here give date.)

.....
Commissioners.

144. PROOF OF NOTICE. § 28. On or before the final hearing, the affidavit of one or more of the commissioners shall be filed in said court, stating that they have sent or caused to be sent by mail, to the owners whose premises have been assessed, and whose name and place of residence are known to them, the notice hereinbefore required to be sent by mail to owners of premises assessed. They shall also cause to be filed the affidavit of the person who shall have posted the notices required by this act to be posted, setting forth when and in what manner the same were posted. Such affidavit shall be received as

prima facie evidence of a compliance with this act in regard to giving such notices. They shall also file a certificate of publication of said notice in like manner as is required in other cases of publication of notices.

145. CONTINUANCE WHEN NOTICE NOT IN TIME. § 29. If ten days shall not have elapsed between the first publication or the putting up of such notices and the first day of the next term of such court, the hearing shall be continued until the next term of court.

146. OBJECTIONS TO REPORT—DEFAULT. § 30. Any person interested in any real estate to be affected by such assessment, may appear and file objections to such report, and the court may make such order in regard to the time of filing such objections as may be made in cases at law in regard to the time of filing pleas. As to all lots, blocks, tracts and parcels of land to the assessment of which objections are not filed within the time ordered by the court default may be entered, and the assessment confirmed by the court.

147. HEARING—FURTHER EVIDENCE—JURY. § 31. On the hearing, the report of the commissioners shall be competent evidence, and either party may introduce such other evidence as may tend to establish the right of the matter. The hearing shall be conducted as in other cases at law, and if it shall appear that the premises of the objector are assessed more or less than they will be benefited, or more or less than their proportionate share of the cost of improvement, the jury shall so find, and also find the amount for which such premises ought to be assessed, and judgment shall be rendered accordingly.

148. TRIAL AT LAW OR PROBATE TERM—PRECEDENCE. § 32. The hearing in all cases arising under

this act may be had at either a law or a probate term of said court, and shall have precedence over all cases in such court except criminal cases.

149. ASSESSMENT MODIFIED, RECOMMITTED OR ANNULLED. § 33. The court before which any such proceeding may be pending, shall have authority, at any time before final *adjournment* (judgment), to modify, alter, change, annul or confirm any assessment returned, as aforesaid, or cause any such assessment to be recast by the same commissioners whenever it shall be necessary for the attainment of justice, or may appoint other commissioners in the place of all or any of the commissioners first appointed, for the purpose of making such assessment, or modifying, altering, changing or recasting the same, and may take all such proceedings and make all such orders as may be necessary to make a true and just assessment of the cost of such improvement according to the principles of this act, and may from time to time, as may be necessary, continue the application for that purpose as to the whole or any part of the premises.

150. JUDGMENT SEVERAL—APPEAL—LIEN. § 34. The judgment of the court shall have the effect of a several judgment as to each tract or parcel of land assessed, and any appeal from such judgment or writ of error shall not invalidate or delay the judgment, except as to the property concerning which the appeal or writ of error is taken. Such judgment shall be a lien upon the property assessed, from the date thereof until payment shall be made.

162. VACATION OF ASSESSMENT—NEW ASSESSMENT. § 46. If any assessment shall be annulled by the city council or board of trustees, or set aside by any court, a

new assessment may be made and returned, and like notive given and proceedings had, as herein required in relation to the first; and all parties in interest shall have the like rights, and the city council or board of trustees and court shall perform like duties and have like power in relation to any subsequent assessment, as are hereby given in relation to the first assessment.

163. SUPPLEMENTAL ASSESSMENTS. § 47. If, in any case, the first assessment prove insufficient, a second may be made in the same manner, as nearly as may be, and so on, until sufficient moneys shall have been realized to pay for such public improvement. If too large a sum shall, at any time, be raised, the excess shall be refunded ratably to those by whom it was paid.

AMENDMENT OF 1887 AS AMENDED IN 1891.
(S. & C. Rev. Stat., 1896, 781, ff.)

170 a. SPECIAL ASSESSMENTS FOR LOCAL IMPROVEMENTS MAY BE PAID IN INSTALLMENTS. § 55. That the amount of any special assessment for any local improvement in any city, incorporated town or village may be divided into installments, when so provided for by the ordinance providing for the said improvement, the first of which shall not exceed the sum of twenty-five per cent. of the total of said assessment, and which shall be due and payable from and after confirmation of said assessment. The remaining portion of said assessment, after deducting the said first installment, shall be divided into four equal annual installments, which said installments shall be payable annually thereafter, and colected in the same manner that other assessments are now collected, and the annual interest, herein provided for, on all of said installments which may at any time remain unpaid, shall also be payable annually thereafter and collected in the same manner that other assessments are now collected. Each of said four last named installments shall bear interest at the rate of six per cent. per annum, payable in each year, from and after the first day of July next succeeding the confirmation of said assessment, when such confirmation shall be had between the first day of November and the first day of March; and when such confirmation is had between the first day of March and the first day of July, then each of said four last named installments shall bear interest at the rate of six per cent. per annum in each year, from and after the first day of October next succeeding such confirmation of assessment; and when such

confirmation is had between the first day of July and the first day of November, then each of said four last named installments shall bear interest at the rate of six per cent. per annum, from and after the first day of January next succeeding such confirmation of assessment. Such interest shall be payable in each year at the time when the installments are payable; PROVIDED, that in cities containing a population of fifty thousand or more this and the following sections shall not apply except in cases where any such special assessments shall exceed in the aggregate the sum of fifteen thousand dollars.

ILL. REVENUE ACT.

(S. & C. Rev. Stat., 3464.)

184. ADVERTISEMENT. § 182. At any time after the first day of April next after such delinquent taxes and special assessments on lands and lots shall become due, the collector shall publish an advertisement, giving notice of the intended application for judgment for sale of such delinquent lands and lots, in a newspaper published in his county, if any such there be, and if there be no such paper printed in his county, then in the nearest newspaper in this state to the county seat of such county. Said advertisement shall be once published at least three weeks previous to the term of the County Court at which judgment is prayed, and shall contain a list of the delinquent lands and lots upon which the taxes or special assessments remain due and unpaid, the names of owners if known, the total amount due thereon, and the year or years for which the same are due. Said collector shall give notice that he will apply to the County Court at the ..... term thereof, for judgment against said lands and lots for said taxes, special assessments, interest and costs, and for an order to sell said lands and lots for the satisfaction thereof; and shall also give notice that, on the ..... Monday next succeeding the day fixed by law for the commencement of such term of the said County Court, all the lands and lots for the sale of which an order shall be made, will be exposed to public sale at the building where the County Court is held in said county, for the amount of taxes, special assessments, interest and cost due thereon; and the advertisement published according to the provisions of this section shall be deemed

to be sufficient notice of the intended application for judgment and of the sale of lands and lots under the order of said court. Where the publisher of any paper that may have been selected by the collector shall be unable or unwilling to publish such advertisement, the collector shall select some other newspaper, having due regard to the circulation of such paper.

187. APPLICATION FOR JUDGMENT—COUNTY COURT—TERM. § 185. That all applications for judgment and order of sale for taxes and special assessments on delinquent lands and lots shall be made at the June term of the County Court. If from any cause the court shall not be holden at the term at which judgment is prayed, the cause shall stand continued, and it shall not be necessary to readvertise the list or notice required by law to be advertised before judgment and sale, but at the next regular term thereafter the court shall hear and determine the matter, and if judgment is rendered, the sale shall be made on the Monday specified in the notice as provided in section 182, such Monday to be fixed by the county collector in the notice. If for any cause the collector is prevented from obtaining judgment at said term, it shall be held to be legal to obtain judgment at any subsequent term of said court, but if the failure arises by the county collector's not complying with any of the requirements of this act, he shall be held on his official bond for the full amount of all taxes and special assessments charged against him: PROVIDED, that any such failure on the part of the county collector shall not be allowed as a valid objection to the collection of any tax or assessment, or to a rendition of a judgment against any delinquent lands or lots included in the application of the county collector:

AND, PROVIDED, FURTHER, that on the application for judgment at such subsequent term, it shall not be deemed necessary to set forth or establish the reasons of such failure: AND, PROVIDED, FURTHER, that in counties where probate courts have been or may hereafter be established, it shall be lawful to make such application for judgment and order of sale to the May term of the County Court.

188. PUBLICATION OF LIST—PAPERS FURNISHED COUNTY—PUBLISHER'S CERTIFICATE—FEE. § 186. The printer, publisher or financial officer or agent of the newspaper publishing the list of delinquent lands and lots, shall transmit, by mail or other safe conveyance, to the collector, four copies of the paper containing said list, to one of which copies he shall attach his certificate, under oath, of the due publication of the delinquent list for the time required by law (which copy shall be presented by the collector to the County Court at the time judgment is prayed), and said copy shall be filed as part of the records of said court. Upon receipt of said papers, and on demand being made, the collector shall pay to the printer the amount of the fees allowed by law for publishing said list and notice; and it shall be his duty to file one copy of said paper in his office, and deliver one copy to the auditor, and one copy to the state treasurer, who shall file and safely preserve them in their respective offices.

190. DELINQUENT LIST—FORM AND CONTENTS. § 188. The collector shall transcribe into a book prepared for that purpose, and known as the tax, judgment, sale, redemption and forfeiture record, the list of delinquent lands and lots, which shall be made out in numerical order, and contain all the information necessary to be re-

corded, at least five days before the commencement of the term at which application for judgment is to be made; which book shall set forth the name of the owner, if known; the proper description of the land or lot, the year or years for which the tax or special assessments are due; the valuation on which the tax is extended; the amount of the consolidated and other taxes and special assessments; the costs and total amount of charges against such land or lot. Said book shall also be ruled in columns, so as to show the amount paid before the rendition of the judgment, the amount of judgment, and a column for remarks, the amount paid before sale and after the rendition of said judgment, the amount of the sale, amount of interest or penalty, amount of cost, amount forfeited to the state, date of sale, acres or part sold, name of purchaser, amount of sale and penalty, taxes of succeeding years, interest and when paid, interest and cost, total amount of redemption, date of redemption, when deed executed, by whom redeemed, and a column for remarks, or receipt, of redemption money.

193. Proceedings in Court—Order for Sale. § 191. The court shall examine said list, and if defense (specifying, in writing, the particular cause of objection), be offered by any person interested in any of said lands or lots, to the entry of judgment against the same, the court shall hear and determine the matter in a summary matter, without pleadings, and shall pronounce judgment as the right of the case may be. The court shall give judgment for such taxes and special assessments and penalties as shall appear to be due, and such judgment shall be considered as a several judgment against each tract or lot, or part of a tract or lot, for each kind of tax or spe-

cial assessment included therein; and the court shall direct the clerk to make out and enter an order for the sale of such real property against which judgment is given, which shall be substantially in the following form:

Whereas, due notice has been given of the intended application for a judgment against said lands and lots, and no sufficient defense having been made, or cause shown, why judgment should not be entered against said lands and lots for taxes (special assessments, if any), interest, penalties and costs due and unpaid thereon for the year or years herein set forth, therefore it is considered by the court that judgment be and is hereby entered against the aforesaid tract or tracts, or lots of land, or parts of tracts or lots (as the case may be), in favor of the people of the State of Illinois, for the sum annexed to each, being the amount of taxes (and special assessments, if any), interest, penalties and costs due severally thereon; and it is ordered by the court that the said several tracts or lots of land, or so much of each of them as shall be sufficient to satisfy the amount of taxes (and special assessments, if any), interest, penalties and costs annexed to them severally, be sold as the law directs.

Said order shall be signed by the judge. In all judicial proceedings of any kind, for the collection of taxes and special assessments, all amendments may be made which, by law, could be made in any personal action pending in such court, and no assessment of property or charge for any of said taxes shall be considered illegal on account of any irregularity in the tax lists or assessment rolls, or on account of the assessment rolls or tax lists not having been made, completed or returned within the time required by law, or on account of the property having

been charged or listed in the assessment or tax list without name, or in any other name than that of the rightful owner; and no error or informality in the proceedings of any of the officers connected with the assessment, levying or collecting of the taxes, not affecting the substantial justice of the tax itself, shall vitiate or in any manner affect the tax or the assessment thereof; and any irregularity or informality in the assessment rolls or tax lists, or in any of the proceedings connected with the assessment or levy of such taxes, or any omission or defective act of any officer or officers connected with the assessment or levying of such taxes, may be, in the discretion of the court, corrected, supplied and made to conform to law by the court, or by the person (in the presence of the court) from whose neglect or default the same was occasioned.

194. APPEALS. § 192. Appeals from the judgment of the court may be taken during the same term to the Supreme Court on the party praying an appeal executing a bond to the people of the State of Illinois, with two or more sureties to be approved by the court, in some reasonable amount to be fixed by the court, conditioned that the appellant will prosecute his said appeal with effect, and will pay the amount of any tax assessment, and cost which may finally be adjudged against the real estate involved in an appeal by any court having jurisdiction in the cause. But no appeal shall be allowed from any judgment for the sale of lands or lots for taxes, nor shall any writ of error to reverse such judgment operate as a supersedeas, unless the party praying such appeal or desiring such a writ of error, shall before taking such appeal or suing out such writ of error, deposit with the

county collector an amount of money equal to the amount of the judgment and costs. If in case of an appeal or suing out a writ of error, the judgment shall be affirmed in whole or in part, the Supreme Court shall enter judgment for the amount of the taxes with damages, not to exceed ten per cent., and order that the amount deposited with the collector, as aforesaid, or so much thereof as may be necessary, shall be credited upon the judgment so rendered, and execution shall issue for the balance of said judgment, damages and costs. The clerk of the Supreme Court shall transmit to said county collector, a certified copy of the order of affirmance, and it shall be the duty of the collector, upon receiving the same, to apply so much of the amount deposited with him, as aforesaid, as shall be necessary to satisfy the amount of the judgment of the Supreme Court, and to account for the same as collected taxes. If the judgment of the County Court shall be reversed and the cause remanded for a rehearing, and if upon the rehearing, judgment shall be rendered for the sale of the land or lots for taxes, or any part thereof, and such judgment be not appealed from, or a writ of error prosecuted with SUPERSEDEAS issued thereon, as herein provided, the clerk of the County Court shall certify to the county collector the amount of such judgment, and thereupon it shall be the duty of the county collector to certify to the county clerk the amount deposited with him, as aforesaid, and the county clerk shall credit the said judgment with the amount of such deposit, or so much thereof as will satisfy the judgment, and the county collector shall be chargeable with, and accountable for, the amount so credited, as collected taxes. Nothing herein contained shall be construed as requiring an addi-

tional deposit in case of more than one appeal or writ of error being prosecuted in said proceedings. If, upon a final hearing, judgment shall be refused for the sale of lands or lots for the taxes, or any part thereof, the collector shall pay over to the party who shall have made said deposit, or his legally authorized agent or representatives, the amount of the deposit, or so much thereof as shall remain after the satisfaction of the judgment against the premises in respect of which such deposit shall have been made.

Ordinance of Corporate Authorities of 1893.
(Printed Rec., p. 41.)

An Ordinance of the corporate authorities of the town of West Chicago for the improvement of Douglas boulevard (or Douglas Park boulevard) from the south-easterly line of Garfield Park (formerly known as Central Park) to the west line of Douglas Park, in the city of Chicago, town of West Chicago, County of Cook and State of Illinois.

Whereas, The West Chicago Park Commissioners have under their control a certain boulevard or pleasureway known as Douglas boulevard, or Douglas Park Boulevard, lying and situate between the south-easterly line of Garfield Park (formerly known as Central Park) and running thence south for a distance of 4,250 feet, more or less, to a point in Sec. 23, T. 39 N., R. 13 E. of 3d P. M., and thence due east a distance of 4,490 feet, more or less, to its intersection with the west line of Douglas Park, in the city of Chicago, town of West Chicago, which is a boulevard or pleasureway regularly laid out and under the management and control of the said West Chicago Park Commissioners for park and boulevard purposes, and lying within the park district or territory, subject to taxation for park and boulevard purposes; and,

Whereas, Said West Chicago Park Commissioners desire to improve said boulevard, and have officially notified the corporate authorities of the town of West Chicago of that desire, and have, by proper order duly entered upon their records, directed their attorney to prepare a proper ordinance in accordance with the plans,

specifications and estimates of the cost of the improvement of said Douglas boulevard or Douglas Park boulevard, to present the same to the town authorities of the town of West Chicago, for action; and,

WHEREAS, Said West Chicago Park Commissioners have made plans, specifications and estimates of the cost of such contemplated improvement, and have transmitted to the corporate authorities of the town of West Chicago the plans, specifications and estimates of the cost of such improvement as provided by law; and

WHEREAS, Said board of West Chicago Park Commissioners have also submitted to the corporate authorities of the town of West Chicago, a petition of the owners of a majority of the land fronting on the said proposed improvement, duly verified by their engineer; and,

WHEREAS, The corporate authorities of the town of West Chicago have found by inspection that said petitions contain the duly authenticated signatures of the owners of a majority of the land fronting on Douglas boulevard, or Douglas Park boulevard, from the south line of Garfield Park to the west line of Douglas Park, as provided by law;

NOW, THEREFORE, be it ordained by the town authorities of the town of West Chicago, consisting of the town supervisor, town clerk and assessor of said town duly designated and constituted by an act of the General Assembly of the State of Illinois, entitled, "An act in regard to the completion, improvement and management of public parks and boulevards, and to provide a more efficient remedy for the collection of delinquent assessments," approved May 2, 1873, in force July 1, 1873, the corporate authorities of said town for such purpose:

SECTION 1. That the improvement of the sixty feet on the outside and on each side of said Douglas boulevard, or Douglas Park boulevard, from the south line of Garfield Park to the west line of Douglas Park, as desired to be made by the West Chicago Park Commissioners, and as shown by the plans, specifications and estimates transmitted by said West Chicago Park Commissioners to the corporate authorities of the town of West Chicago shall be made, and that the cost thereof, together with the cost of making and collecting the assessment to be made therefor, shall be paid by special assessment upon the contiguous property abutting on said boulevard so to be improved in the manner provided by law and in accordance with such plans, specifications and estimates.

SECTION 2. That said special assessment shall be divided into installments and that the first of said installments shall be 20 per cent. of the total amount of said assessment, and that the deferred installments shall bear interest at the rate of 6 per cent. per annum, as provided by law.

SECTION 3. The improvement hereby provided for shall be made for and under the superintendence, supervision and direction of the West Chicago Park Commissioners. All portions of the sixty (60) feet on the outside and on each side of said boulevard shall be brought to the established grade of said boulevard, except as hereinafter otherwise provided. All and any portion thereof below the line to which it is required to be brought by the provisions of this ordinance, shall be filled with clay, earth, sand gravel or cinders free from all foreign and decaying substances, and all trenches dug in any portion of either of said sixty (60) foot spaces and all fresh

filling shall be flushed with water and rammed or rolled with a steam roller to a final compression in the manner directed by the engineer of the West Chicago Park Commissioners.

SECTION 4. That the supervisor of the town of West Chicago proceed at once to file a petition in the name of the town in the County Court of Cook County for proceedings to assess the cost of the improvement herein provided for, acting therein under and by the direction of the attorney of the West Chicago Park Commissioners, and in conformity with the laws of the State of Illinois, in such case made and provided.

SECTION 5. This ordinance shall be in force and take effect from and after its passage.

Ordinance of 1896.

(Pr. Rec., 50.)

For a special assessment for the cost of the boulevard improvement of Douglas boulevard (or Douglas Park boulevard) from the south-easterly line of Garfield Park (formerly known as Central Park) to the west line of Douglas park, in the town of West Chicago, in the city of Chicago, county of Cook, and State of Illinois.

Be it ordained by the West Chicago Park Commissioners in regular meeting assembled:

Sec. 1. That whereas, the corporate authorities of the town of West Chicago passed an ordinance on March 28, 1893, for the making of a boulevard improvement on Douglas boulevard or Douglas Park boulevard, from the south-easterly line of Garfield park to the west line of Douglas park, as desired to be made by the West Chicago Park Commissioners, and as shown by the plans, specifications and estimates transmitted by said West Chicago Park Commissioners to said corporate authorities of the town of West Chicago, and which ordinance provided that the cost of said improvement, together with the cost of making and collecting the special assessment to be made therefor, should be paid for by a special assessment upon the property benefited by such improvement; and

Whereas, certain proceedings were instituted by the corporate authorities of said town of West Chicago, in the County Court of Cook County, on April 7, 1893, for the levying of a special assessment for the cost of said improvement, in pursuance of said ordinance, as case No. 10655 of said court; and

Whereas, the said boulevard improvement has been heretofore made and completed; and

Whereas, the said special assessment proceedings in said County Court above mentioned, and the provisions of said ordinance for the payment of said improvement have been heretofore, and on the 2d day of March, A. D. 1896, declared void by the Supreme Court of Illinois, a court of competent jurisdiction, and the provisions of said ordinance for said special assessment have failed; and

Whereas, said boulevard improvement provided for in said ordinance included asphalt roadways, leveling, stone sidewalk, black earth filling, common filling, grass plats, sodding, lamp posts, trees, catch-basins, sewers and superintendence of work; now

Therefore, be it ordained:

Sec. 2. That a new special assessment on the property benefited by said improvement, to the amount that the same may be legally assessed therefor, be levied to pay the cost of said boulevard improvement above specified, and the remainder of such cost be paid by general taxation, viz.: from the general funds of this board, all in accordance with an act of the General Assembly of the State of Illinois, entitled "An Act to enable park commissioners or park authorities to make local improvements and provide for the payment therefor," approved June 24th and in force July 1, 1895.

Sec. 3. That an estimate of the cost of said improvement be made by this commission and spread of record.

Sec. 4. This ordinance shall be in force from and after its passage.

Respectfully submitted.

ROBERT A. CHILDS,
CHARLES HUDSON,
Counsel for Defendant in Error.